



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, मंगलवार, 11 नवम्बर, 2014 / 20 कार्तिक, 1936

हिमाचल प्रदेश सरकार

[Authoritative English text of this Department Notification No. Fin(Pen)A(3)-1/09-Part-IV, dated 2014 as required under Clause (3) of Article 348 of the Constitution of India]

FINANCE (PENSION) DEPARTMENT

NOTIFICATION

Dated : November, 2014

No. Fin (Pen) A (3)-1/09-Part-IV.—In exercise of the powers conferred by proviso to Article 309 of the Constitution of India, the Governor, Himachal Pradesh is pleased to make the following rules further to amend the Central Civil Services (Pension) Rules, 1972, in their application to the State of Himachal Pradesh, namely:-

1. Short title and Commencement.—(1) These rules may be called the Central Civil Services (Pension) Himachal Pradesh (Amendment) Rules, 2014.

(2) These rules shall come into force from the date of publication in the Rajpatra, Himachal Pradesh.

2. Amendment of rule 49.— (2) In rule 49 of the Central Civil Services (Pension) Rules, 1972, in their application to the State of Himachal Pradesh, below sub-rule (2), the following proviso shall be inserted, namely:--

“Provided that in case of the Government servant retiring in accordance with the provisions of rule 3(2)(a), rule 3(2)(b) and 1st proviso to rule 3(2) of the Himachal Pradesh Civil Service (Premature Retirement) Rules, 1976, before completing qualifying service of 33 years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to 33 years of qualifying service and in no case the amount of pension shall be less than rupees three thousand and five hundred per mensem.”

By order,
Sd/-

*Principal Secretary (Finance) to the
Government of Himachal Pradesh.*

GENERAL ADMINISTRATION DEPARTMENT

SECTION-A

NOTIFICATION

Shimla-2, the 10th November, 2014

No. GAD-A(F)9-5/2014.—The Governor, Himachal Pradesh is pleased to order that the holidays as listed in Annexure-I, will be observed as gazetted holidays during the calendar year-2015, in the State of Himachal Pradesh.

2. In addition to the holidays mentioned in Annexure-I, all Government employees will be authorized to avail Two Restricted Holidays out of those mentioned in Annexure-III.

3. Holidays listed in Annexure-II are declared Gazetted holidays for women employees working in all Government Offices/ Boards/ Corporations/ Educational Institutions in H.P. These will also be holidays for Women Employees within the meaning of Section 25 of Negotiable Instrument Act, 1881 and also to daily wage Women Employees.

4. (i) The Deputy Commissioners in the State are authorized to declare two local holidays within their jurisdiction during Year 2015 in connection with celebration of important fairs and festivals in the respective District/ Area.

(ii) However, for the offices situated within the Municipal limits of Shimla, two local holidays will be declared by the State Government after receiving proposals in this regard from the Deputy Commissioner Shimla and for the rest of District Shimla, two local holidays will be

declared/decided by the Deputy Commissioner Shimla as per past practice. For the Offices of H.P. Govt. situated at Delhi, two local holidays will be declared by the State Govt. after receiving proposals in this regard from Pr. Resident Commissioner, H.P., New Delhi.

5. The holidays listed in Annexure-IV are also declared as gazetted holidays within the meaning of Section 25 of Negotiable Instrument Act, 1881.

By order,
P. MITRA,
Chief Secretary.

ANNEXURE-I

Gazetted Holidays for the Year-2015

Sr. No.	Holiday	Date	Saka	Day of week
1.	Statehood Day	25 th January, 15	SAKA ERA 1936 Magha 05	Sunday
2.	Republic Day	26 th January, 15	Magha 06	Monday
3.	Guru Ravidas's Birthday	3 rd February, 15	Magha 14	Tuesday
4.	Maha Shivratri	17 th February, 15	Magha 28	Tuesday
5.	Holi	6 th March, 15	Phalguna 15	Friday
6.	Ram Navami	28 th March, 15	SAKA ERA 1937 Chaitra 07	Saturday
7.	Good Friday	3 rd April, 15	Chaitra 13	Friday
8.	Dr. B. R. Ambedkar's Birthday	14 th April, 15	Chaitra 24	Tuesday
9.	Himachal Day	15 th April, 15	Chaitra 25	Wednesday
10.	Parshu Ram Jayanti	20 th April, 15	Chaitra 30	Monday
11.	Budha Purnima	4 th May, 15	Vaisakha 14	Monday
12.	Maharana Pratap Jayanti	20 th May, 15	Vaisakha 30	Wednesday
13.	Sant Guru Kabir Jayanti (Prakat Diwas)	2 nd June, 15	Jyaishtha 12	Tuesday
14.	Idul Fitr	18 th July, 15	Ashada 27	Saturday
15.	Independence Day	15 th August, 15	Sravana 24	Saturday
16.	Janmashtami	5 th September, 15	Bhadra 14	Saturday
17.	Idul Zuha (Bakrid)	25 th September, 15	Asvina 03	Friday
18.	Mahatma Gandhi's Birthday	2 nd October, 15	Asvina 10	Friday
19.	Dussehra	22 nd October, 15	Asvina 30	Thursday
20.	Muharram	24 th October, 15	Kartika 02	Saturday
21.	Maharishi Valmiki's Birthday	27 th October, 15	Kartika 05	Tuesday
22.	Diwali	11 th November, 15	Kartika 20	Wednesday
23.	Guru Nanak's Birthday	25 th November, 15	Agrahayana 04	Wednesday
24.	Christmas Day	25 th December, 15	Pausha 04	Friday

Gazetted Holidays for the Year-2015 for women Employees working in all Government Office/Boards/Corporations/Educational Institutions in H.P. These will also be holidays for women employees under Section 25 of Negotiable Instrument Act, 1881 and also to daily wage Women Employees.

Sr. No.	Holiday	Date	Saka	Day
1.	Raksha Bandhan	29 th August, 15	SAKA ERA 1937 Bhadra 07	Saturday
2.	Karva Chauth	30 th October, 15	Kartika 08	Friday
3.	Bhai Duj	13 th November, 15	Kartika 22	Friday

Restricted Holidays for the Year-2015

Sr. No.	Holiday	Date	Saka	Day of week
1.	New Year's Day	1 st January, 15	SAKA ERA 1936 Pausha 11	Thursday
2.	Makar Sankranti/ Lohri	14 th January, 15	Pausha 24	Wednesday
3.	Basant Panchami	24 th January, 15	Magha 04	Saturday
4.	Swami Dayanand Saraswati Jayanti	14 th February, 15	Magha 25	Saturday
5.	Mahavir Jayanti	2 nd April, 15	SAKA ERA 1937 Chaitra 12	Thursday
6.	Easter Sunday	5 th April, 15	Chaitra 15	Sunday
7.	Baisakhi	14 th April, 15	Chaitra 24	Tuesday
8.	Maha Ashtami	21 st October, 15	Asvina 29	Wednesday
9.	Govardhan Puja`	12 th November, 15	Kartika 21	Thursday
10.	Guru Teg Bahadur's Martyrdom Day	24 th November, 15	Agrahayana 03	Tuesday
11.	Christmas Eve	24 th December, 15	Pausha 03	Thursday

Gazetted Holidays for the Year 2015 under Negotiable Instrument, Act, 1881

Sr. No.	Holiday	Date	Saka	Day of week
1.	Republic Day	26 th January, 15	SAKA ERA 1936 Magha 06	Monday
2.	Guru Ravidas's Birthday	3 rd February, 15	Magha 14	Tuesday
3.	Holi	6 th March, 15	Phalguna 15	Friday
4.	Ram Navami	28 th March, 15	SAKA ERA 1937 Chaitra 07	Saturday

5.	Annual Accounts closing	1 st April, 15	Chaitra 11	Wednesday
6.	Himachal Day	15 th April, 15	Chaitra 25	Wednesday
7.	Budha Purnima	4 th May, 15	Vaisakha 14	Monday
8.	Idu'l Fitr	18 th July, 15	Ashada 27	Saturday
9.	Independence Day	15 th August, 15	Sravana 24	Saturday
10.	Janmashtami	5 th September, 15	Bhadra 14	Saturday
11.	Idu'l Zuha (Bakrid)	25 th September, 15	Asvina 03	Friday
12.	Mahatma Gandhi's Birthday	2 nd October, 15	Asvina 10	Friday
13.	Muharram	24 th October, 15	Kartika 02	Saturday
14.	Maharishi Valmiki's Birthday	27 th October, 15	Kartika 05	Tuesday
15.	Diwali	11 th November, 15	Kartika 20	Wednesday
16.	Christmas Day	25 th December, 15	Pausha 04	Friday

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 31th October, 2014

No: Sharm (A) 7-1/2005 (Awards) L-D/Shala.—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court D/Shala on the website of the Department of Labour & Employment of the Government of Himachal Pradesh.

Sr. No:	Case No:	Title of the Case	Date of Award
1.	112/2013	S/Shri Balak Ram V/s D.F.O. Suket.	8/8/2014
2.	292/2012	Dalbir Singh V/s M.D. M/s MBD Printographic.	8/8/2014
3.	111/2013	President/G.S.Worker Union. V/S D.F.O. Suket.	11-08-2014
4.	293/2012	Sunil Kumar V/S Distt. Ayurvedic Officer.	11-08-2014
5.	19/2014	Balvir Singh V/S E.E. HPPWD, J/Nagar.	9/9/2014
6.	25/2014	Premi Devi V/s -do-	9/9/2014
7.	27/2014	Nag Pal V/s -do-	9/9/2014
8.	59/2014	Partap Singh V/s -do-	9/9/2014
9.	185/2013	Hoshiyar Singh V/s -do-	9/9/2014
10.	197/2013	Pyar Chand V/s -do-	9/9/2014
11.	129/2013	Padma Youdan V/s E.E. I&PH, Kaza	22-09-2014
12.	130/2013	Padma Dolkar V/s -do-	22-09-2014
13.	131/2013	Chhering Butith V/s -do-	22-09-2014
14.	132/2013	Chhering Dolma V/s -do-	22-09-2014

By order,
(R.D.DHIMAN),
Pr.Secretary (Labour & Employment).

**IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 112/2013

Date of Institution : 06-08-2013

Date of Decision : 08-08-2014

Sh. Balak Ram son of Sh. Pyar Singh, Through President, Forest Worker's Union (Affiliated to CITU) Sunder Nagar Unit, Slah, Near Poultry Farm, Sunder Nagar, Disdtrict Mandi, H.P. . .Petitioner.

Versus

1. The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.K. Sharma, Adv.

For the Respondents. : Sh. Sanjeev Singh Rana, DDA

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services Shri Balak Ram s/o Shri Pyar Singh, Through President, Forest Worker's Union (Affiliated to CITU) Sunder Nagar Unit, Slah, Near Poultry Farm, Sunder Nagar, District Mandi, H.P. during 2003 to 2008 and finally during April 2009 by The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After receipt of the reference, notices were issued to the parties. The petitioner appeared and filed statement of claim on the averment that the petitioner was engaged on daily rated beldar by the respondent in Forest Division Suket at Sunder Nagar on 01-12-1999. It is alleged that the petitioner has completed 240 days from the date of his initial engagement till December, 2002 in each calendar year. But thereafter, he was given fictional breaks from the year 2003 to 2008 and then his services were terminated on 11-04-2009. But at the same time, junior persons to him S/Sh. Lal Chand, , Dola Ram, Jai Chand, Jagar Nath, Sohan Lal, Ashish, Angat Kumar and Smt. Indira Devi were allowed to complete 240 days in each calendar year, by the respondent. Therefore, fictional breaks granted to the petitioner were illegal and unconstitutional. It is alleged that during the fictional break, the petitioner remained unemployed. It is alleged that the earlier Reference was made by the Labour Commissioner regarding the termination in March, 2008 which was registered in Reference No. 214/10. On 19-01-2013, the petitioner has withdrawn the said Reference, as fresh demand notice regarding fictional breaks from the year 2003 to 2009 was already issued. Therefore, it is prayed that the termination of the petitioner be set-aside and his period to fictional break be held to be illegal and granted consequential benefits.

3. After notice, the respondent appeared to contest the claim by filing reply, wherein it has taken preliminary objection regarding maintainability. On merits, the engagement of the petitioner as casual labourer and that he worked for 240 days in each calendar year up-to the year 2002, was admitted. It is averred that thereafter the petitioner was provided work more than 240 days in the years 2003 to 2006 as per mandays chart Annexure R-I, but the applicant absented from duty of his own sweet will and convenience. It is alleged that the petitioner was engaged for the seasonal activities for forest department i.e. plantation, fencing, fire season etc. Therefore, no fictional breaks were given to him. The mandays chart of other workers is annexure R-II. It is alleged that the petitioner abandoned the work in April, 2009 and did not report for work thereafter. It is alleged that the petitioner was gainfully employed as agriculturist for his livelihood of his job. Demand notice made by the petitioner has not been denied by the respondent and is has prayed for dismissal of the claim.

4. On 27-12-2013, the following issues were framed:

Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent during the years 2003 to 2008 is/was illegal and unjustified as alleged? . . .*OPP*.

1. Whether the final termination of services of the petitioner by the respondent in the month of April, 2009 is illegal and unjustified as alleged? . . .*OPP*.

2. Whether the claim petition is not maintainable in the present form ? . . .*OPR*.

3. Whether the petition is hit by the vice of delay and laches as alleged? . . .*OPR*.

5. Relief.

5. I have heard the ld. AR/ counsel for the parties and have gone through the case file.

6. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No.2 : Yes

Issue No.3 : No

Issue No.4 : No

Relief : Reference answered accordingly.

REASONS FOR FINDINGS

ISSUE NO. 1 and 2.

7. Both the issues are taken up together being interconnected. In order to prove his case, the petitioner has filed his affidavit Ex PW1/A, in which he has asserted the facts as pleaded. He has also claimed that some juniors were also regularized, who were allowed to complete 240 days in each calendar year. But he was given fictional breaks. He has filed copy of demand notice Ex. PW1/B, copy of order of this Tribunal Ex.PW1/C, copy of notification of June, 2010 Ex. PW1/D and copy of demand notice dated 14- 09-2011 Ex. PW1/E. In his cross examination, he has admitted that he was employed in 1999 and was working in the nursery, but denied that it was a seasonal work. He has denied that he remained absent from duty, but volunteered that he was given

breaks. He has admitted when he used to be free, then he did agricultural work. He has denied that Sh. Lal Chand etc. worked regularly therefore, he cannot compare himself with them. He has denied that he was not removed from service.

8. In rebuttal to the above evidence, the respondent has examined RW1 Ajit Kumar and filed his affidavit ExRW1/A in examination-in-chief, by asserting the facts as pleaded. He has also filed the mandays chart Ex. RW1/B, copy of mandays chart of Sh. Lal Chand etc. Ex.RW1/C and copy of demand notice issued by the petitioner Ex.RW1/D. In his cross examination, he has admitted the seniority list Ex.P-A and that as per this list, the persons junior to the petitioner are still working. He has admitted that they used to give fictional breaks to the petitioner. He could not tell whether Sh. Dola Ram and Sh. Ashish Kumar were regularized. He has stated that they had not prepared from muster-roll. He has stated when the petitioner left the job, he was not issued to notice to join the service. He has denied that the petitioner was removed from service on 11-04-2009. He has stated that the other workers are still working in the regular post. It is denied that the services of the petitioner were terminated unlawfully. This is what the parties have led the evidence.

9. It has been contended on behalf of the petitioner that after 10- 04-2009, he was not taken on job and removed from service. But the respondent has denied that the petitioner was so removed.

10. I have gone through the case file. The mandays chart produced by the respondent shows that the petitioner had worked for 240 days or more in each calendar year from 2000 to 2002 and less than 240 days thereafter, but after 2009, he has not been shown to have been working. Though, Annexure R-II shows that some workers, who are said to be junior to the petitioner, were shown to be working for more than 240 days in a year. The RW1 has not offered any explanation to Annexure R-II and Ex RW1/C and to show as to why the workmen, who were juniors to the petitioner were given work more than the petitioner. Ex RW1/C further shows that one Sh. Lal Chand has been regularized though, other workers namely Smt. Indira Devi, Dola Ram and Sohan Lal have not been regularized. But they are shown to be continuously working. Sh. Jai Chand and Jagar Nath are not shown to be working in 2000. This show that the petitioner was not given the work after 2009, as per his mandays chart Ex. RW1/B. The mandays chart shows that in the year 2008, he worked for three months i.e. January to March, 48 days, thereafter January, 2009 to April, 2009, 85 days only.

11. The respondent has taken plea that the petitioner had absented himself from work, therefore, he could not be given the work. But, it appears that in the mandays chart Ex.RW1/B, the petitioner was given only 110 days work in the year 2007 and he was not given any work from Sept., 2007 onwards. Thereafter, it appears that the petitioner served the demand notice Ex. RW1/D in January, 2008 and he was given work for only three months. Had the petitioner been offered the work, then he would not have served the demand notice the year 2008. He also appears to have taken up the matter with the forest working union, who ultimately sent the demand notice Ex.PW1/E in 2011. The petitioner has also withdrawn his earlier Reference No. 214/2010 vide order Ex. PW1/C. These facts show that the respondent did not provide the work to the petitioner. The respondent has not proved that any notice was ever sent to the petitioner to join the duty, in case he was absent from duty. Therefore, it cannot be said that the petitioner had abandoned the job and was not interested to work.

12. The petitioner has also relied on the seniority list Ex. P-A in which his name figures at Sr. No. 314 and he was shown to be employed on 01-12-1999. The petitioner has alleged that Sh. Dola Ram (figuring in Sr. No. 330) and Smt. Indira Devi (figuring in Sr. No. 346 in the seniority list), to name of the few, have been given work for more than 240 days, whereas, no work has been

provided to him. RW1 has not shown why juniors were retained in job and given work and why senior person like the petitioner, have not been given the work since 2009. There is thus, violation of provisions of Sections 25-F, 25-G and 25-H of the Act, in as much as no retrenchment notice has been given to the petitioner and at the same time junior persons to the petitioner were given work, in the violation of 'Last Come First Go' principle. It has been found that the junior have been given work more than 240 days. Therefore, the fictional breaks given to the petitioner did not seem to be justified. Hence, my findings on issue No.1 is against the respondent and in favour of the petitioner.

13. In view of the above discussion, the termination of the petitioner during April, 2009 by the respondent is highly illegal and unjustified. Hence, my findings on issue No.2 is against the respondent and in favour of the petitioner. Both the Issues are decided accordingly.

ISSUE NO.3

14. In view of the findings on issues No.1&2, it appear that the petition is maintainable and there is no infirmity in the present form. In fact, the reference has been received from the appropriate Govt. and the petitioner has filed the statement of claim, which is maintainable. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

15. It is not shown by the respondent as to why the petition is hit by delay and laches etc. The respondent had filed its demand notice Ex. RW1/D issued in January, 2008 and thereafter, the petitioner has filed the petition registered Reference No. 214/10, which was withdrawn as per Ex.PW1/C. His present reference was made by the appropriate Government on the demand notice Ex.PW1/E, sent by the Worker's Union. Hence, my findings on the above issue is in the negative, against the respondent and in favour of the petitioner.

RELIEF :

16. In view of the above discussion, it has to be held that the petitioner's services were illegal terminated by the respondent. The fictional breaks given to the petitioner did not seem to be justified. Therefore, the claim is allowed and reference answered accordingly in favour of the petitioner. Therefore, the petitioner is ordered to be reinstated and shall be deemed to be in the continuous service of the respondent with all consequential benefits, except back wages. He shall be considered for regularization by the respondent, at the time when his juniors are to be regularized, as per the policy governing the daily wagers, as framed by the State Government and operative from time to time. In the peculiar facts of the case, the parties shall bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of August, 2014.

(J.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 292/2012

Date of Institution : 19.7.2012

Date of Decision : 08.08.2014

Shri Dalbir Singh, Pradhan, M.B.D. Printographics Workers Union, Ram Nagar, Gagret,
Tehsil Amb, Distt. Una, H.P. *..Petitioner.*

Versus

The Managing Director, M/S M.B.D Printographics (Pvt.) Ltd. Paper Manufacturing Unit,
Gagret, Tehsil Amb, Distt. Una, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. R.K. Singh Parmar, AR

For the Respondent : Sh. M.M. Sharma, AR

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether demand no.1, 2, 3, 8 and 9 raised by Sh. Dalbir Singh, Pradhan, M.B.D. Printographics Workers Union, Ram Nagar Gagret, Tehsil Amb, Distt. Una, H.P. through demand notice dated -22-12-2011 (Copy-Enclosed) to be fulfilled The Managing Director, M/S M.B.D. Printographics (Pvt.) Ltd. Paper Manufacturing Unit, Gagret, Tehsil Amb, Distt. Una, H.P. are proper and justified? If yes, what monetary and other service benefits the concerned workers are entitled to from the above employer/management?”

2. After notice, the petitioner appeared and filed the statement of claim by averring that the petitioner union had sent a demand notice dated 22.12.2011 by raising the various demands of the workers of the company, out of which the reference has been made pertaining to the demands i.e. serial No.1 to 3, 8 and 9. It is averred that as per demands, the union had prayed for raising the salary, keeping in view the price hike. The union had also prayed that the other units of the company were given annual promotion, but the workers of the paper unit were not given any annual promotion which should be given. They also demanded the bonus for the years 2009 to 2011, which was given to earlier to the other workers of the company and not to the workers of the paper unit. The other demand pertains to annual promotion to the paper unit workers regarding overtime, D.A. bonus etc. The last demand was regarding the transfer of one Ashok Kumar, worker sent to Jalandhar for three months and he was to be recalled after three months. It is alleged that the company had given the benefits to other employees except 75 workmen of this paper unit, who were entitled these benefits. It is alleged that instead of accepting their demands, the workers refrained from entering the gate of the factory w.e.f. 9.4.2012. It is alleged that the management had applied for the prior permission to retrench the workers in question, but the appropriate Govt. had declined it vide its order dated 2.4.2012. Hence, the petitioner has prayed that his demands be allowed.

3. After notice, the respondent appeared and filed reply by raising preliminary objections on the ground that the petitioner union is not a registered union under the Trade Unions Act, 1926. It is alleged that the president of the workers union of the company is now not in service of the respondent, since he has already received legal, full and final dues under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for short). Therefore, he is not authorized to attend the proceedings. It is alleged that the factory is lying closed since 8.1.2011. There is no production activity in the same and there are only seven employees in the office of the respondent. On merits qua demand No.1 that the same is baseless as the workers were being paid their wages under the Minimum Wages Act as fixed by the Government of Himachal Pradesh. It is further alleged that it is not mandatory for the respondent to pay annual increment to each and every workers as it depends upon the financial position and working position of the factory. It is alleged that the factory after its inception was having losses. It is alleged that since the respondent did not derive any profit during the year 2009 to 2011. Therefore, no bonus was to be paid to the workmen under Section 16 of the Payment of Bonus Act, 1965. It is denied that any discrimination was done with the workmen as alleged. It is alleged that all the workmen have already been retrenched on 9.4.2012. Regarding Ashok Kumar, it has been alleged that he was not a worker of M/s. M.B.D. Printographics Pvt. Ltd., but he was the worker of M/s. Malhotra Book Depot Unit-II, Jalandhar. It is alleged that in the agreement which was signed between Ashok Kumar and management under Section 12(3) of the Act, which was implemented in toto. It is alleged that there was no mention of transferring him back within three months. It is alleged that the case of Ashok Kumar vs. MBD Printographics Pvt. Ltd., Gagra is also pending in this Court for hearing, in which he has sued the respondent management for non implementation of this agreement. It is alleged that Ashok Kumar has challenged the order of this Court before the Hon'ble High Court of Himachal Pradesh. In that case the same was remanded to this Court. In the all, the respondent has denied the case of the petitioner and prayed for the dismissal of the same.

4. In the rejoinder filed, the petitioner has asserted its own case and denied that of the respondent.

5. On 27.11.2012, following issues were framed:

1. Whether the demands No. 1,2,3,8 and 9 raised by the petitioner union are proper and justified as alleged? . . .OPP.
2. Whether there is no recognized/registered workers union as alleged. If so, its effect? . . .OPR.
3. Whether Sh. Dalbir Singh (President) is not a competent person to sue as alleged. If so, its effect? . . .OPR.
4. Whether the claim petition is not maintainable in the present form? OPR
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : No

Issue No.3 : No

Issue No.4 : *No*

Relief. : Reference answered accordingly.

REASONS FOR FINDINGS

ISSUE NO. 2

8. It is alleged by the respondent that the union of the workers is not a recognized/registered union. However, the petitioner has alleged that for raising the dispute, the trade union is not required to be registered and the petitioner has relied on the judgment of the Hon'ble High Court of Himachal Pradesh reported in Phagu Pal vs. Birla Textile, 2009 (2) RSJ 163, in which it has been held that it is not necessary that for espousal of the grievance of the members by the Union, it should be registered trade union. No contrary authority has referred to on behalf of the respondent.

9. Even otherwise, the evidence shows that the union of the petitioner i.e. MBD Printographics Workers Union is a registered union as per certificate Ex. PA issued by the Registrar of Trade Unions, Himachal Pradesh. This certificate has not been disputed by the respondent. Therefore, it is held that the petitioner union is a registered union and it has right to espouse the grievances of the workmen. Hence, this issue is decided against the respondent and in favour of the petitioner.

ISSUE NO.3

10. It is alleged by the respondent that the President of the Union, namely; Dalbir Singh is not a competent person to file the claim. It is submitted that he was not an employee of the respondent when the demands were raised by the worker's union, of which he claims to be the president. The President of union Dalbir Singh has filed his affidavit Ex. PW1/A in evidence, while appearing as PW1. He has admitted that he is not employee of the respondent these days. But it appears that the demands of the petitioner union was raised by the President of Union, no matter that he was not working in the unit of the respondent at the relevant time. The provisions of Trade Unions Act, 1926 are relevant in this regard. Section 21 of the aforesaid Act provides that any persons above the age of 15 years can be the member of the trade union, though, he can not be the office bearer of the trade union. Further, under Section 21A of the said Act, a person cannot be a member of the Executive or the Office bearer of the Union, unless he has attained eighteen years of age. Section 22 of the aforesaid Act also provides that not less one and half of the total members of the office bearers of the registered trade union shall be actually engaged or employee in the industry of which the trade union is connected. This section thus, provides that a non-worker can also be the office bearer of the Union. These provisions thus, show that even if by the time the demand notice was raised by the union, Dalbir Singh was not a workman in the industry, but nonetheless under Section 22 of the Act, he could be the President/office bearer of the union.

11. In view of the above discussions, my findings on issue No.3 is the negative, against the respondent and in favour of the petitioner and it is held that Dalbir Singh, President of the Union could pursue the claim.

ISSUE NO.1

12. The trade union has raised the demands as per the demand notice dated 22.12.2011 and out of the nine demands, only five demands were referred to by the appropriate Government through the present reference, namely demands No.1,2,3,8 and 9. It has to be mentioned that the

matter regarding the transfer of Ashok Kumar, workman appears to be raised before the management. But it has to be mentioned here that the trade union had not correctly taken up the matter, as Ashok Kumar was not transferred only for three months to Jalandhar, in view of the settlement Ex. RW1/A filed by the respondent. He was actually been transferred to Punjab (Jalandhar) and there is no mention in this settlement that the transfer was for three months only. This Court can also take judicial notice of the fact that Ashok Kumar has also filed an application No. 485/2011 under Section 33-C (2) of the Industrial Disputes Act, 1947 for implementation of the settlement, which is pending before this Court. Therefore, the settlement could not be agitated by the trade union simultaneously, when the workman himself has filed the case in this court. Therefore, it appears that the trade union had no right to agitate the matter in respect of the transfer of Ashok Kumar, as he had himself filed the application for implementation of this settlement before this Court separately. Even otherwise, this court does not find any merit in this demand, as it is not supported by any evidence and the settlement Ex. RW1/A negates the case of the petitioner.

13. Regarding other demands 1,2,3 and 8, it has to be mentioned that the petitioner has not filed any evidence to prove these demands. The demand No.1 pertains to increasing the monthly salary of the workmen to double, in view of the price hike. The demand no.2 pertains to yearly promotion to the workmen working in paper unit, though, it was given to the workmen of the other units of the company. The demand no.3 pertains to the payment of bonus from the year 2009 to 2011 to the workmen of paper unit, though, the bonus was allegedly given to the other workmen of the company. The demand no. 8 again referred to the payment of bonus, yearly promotion, overtime and D.A. to the workmen of the paper unit and stopping the discrimination with them.

14. The petitioner to prove these demands had examined PW1 Dalbir Singh, who has filed his affidavit Ex. PW1/A of examination-in-chief in evidence. But he has not filed any document to prove that they were entitled for bonus, yearly promotions, payment of D.A. etc. Nothing material has also come in his examination. The respondent, on the other hand, had examined Sanjay Kumar, Authorized Representative of the respondent as RW1, who had filed his affidavit of examination-in-chief Ex. RW1/A, in which he has asserted the facts as already pleaded. He has also filed the documents on record; the copies of the challans under EPF Exts. RW1/B and C, copy of ESI Challan Ex. RW1/D, copy of ESI contribution Ex. RW1/E, copy of notice dated 7.4.2012 Ex. RW1/F, copy of balance sheet Ex. RW1/G, copy of balance sheet as it stood on 31.3.2011 Ex. RW1/H and copy of settlement, which was agreed with Ashok Kumar Ex. RW1/I. This witness was examined at length with respect to the payment of minimum wages to the workmen, complaint made to SDM, Amb. But he has further stated that after checking the record, the case has been dropped. This witness was cross-examined at length regarding the retrenchment of the workmen, but no cross-examination has been done with regard to the demands No.1,2,3 and 8, which have been referred to this Court and the matter of retrenchment is not subjudice in this reference.

15. The Authorized Representative of the petitioner union has submitted that the workmen should have been paid the bonus under Section 10 of the Bonus Act, 1965 and minimum bonus of 8.33% of the salary of wage has to be paid. It is further submitted that they have also to be given the yearly promotion and their salary has also to be doubled. But Authorized Representative appearing for the respondent has argued that since the company was running in loss, therefore, it has retrenched the workmen. It has also made the reference to the balance sheets of the company filed as Exts. RW1/G and H, certified by the chartered accountant. After considering the rival contention of both the parties, it has to be observed that no evidence has been brought on the record by the petitioner that the workers of the paper unit were discriminated against and the workmen working in different units of the company were given benefits. Regarding the demand of bonus, it has to be observed and as submitted on behalf of the respondent, that as per Section 16 of the Payment of Bonus Act, 1965, it is not required that the minimum bonus has to be paid, if the company is running in losses and not earning profits. Because, the provisions of Section 10 of the

Payment of Bonus Act are made subject to the other provisions of the Act, which means that the provisions of Section 10 are subject to the provisions of Section 16 of the Act. Therefore, the workman could not claim the payment of bonus as a matter of right. The petitioner had not brought on record any evidence nor summoned any record from the respondent to show that the respondent had earned profit and also paid bonus to other workmen, so that it could be directed to make payment of bonus.

16. Regarding the increase in the salary of the workmen, it has to be observed that the salary has to be paid to the workmen as per the minimum wages fixed by the government. The Court cannot give any such direction as prayed for. There is no evidence that the other workmen in any of the units of the respondent are getting more salary than paid to the workmen of petitioner union.

17. Similarly, it has to be observed that regarding the demand No.8, nothing has been proved in this regard so that the respondent could be directed to pay bonus, yearly promotions, overtime etc. No evidence has been brought on record to prove that the overtime wages were not paid to these workmen. Therefore, it appears that the demands have simply been raised by the petitioner union. But, without proving the same, it is not entitled to get any relief.

18. After going through the entire record and hearing the parties, it appears that the demands raised by the petitioner do not appear to be proper and justified. Hence, my findings on issue No.1 is in the negative, against the petitioner and in favour of the respondent.

ISSUE NO.4

19. So far as the form of the claim petition is concerned, no infirmity has been pointed out and no specific arguments were raised by the respondent in this regard. Therefore, this issue is decided against the respondent and in favour of the petitioner.

RELIEF:

20. In view of the findings on the issues above, the reference is answered against the petitioner. The petitioner is not entitled for the relief claimed, as this court does not find any merit in demands raised. Parties to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of August, 2014.

(J.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref : No. : 111/2013

Date of Institution : 06-08-2013

Date of Decision : 11-08-2014

1. President/General Secretary, Forest Workers Union (Aff.CITU) Sunder Nagar Unit, Slah Near Poultry Farm, Sunder Nagar-I Mandi, H.P.

2. Smt. Kalan Devi w/o Sh. Beli Ram, Village Bhawana, P.O. Jarol, Tehsil Sunder Nagar, Distt. Mandi, H.P. . .*Petitioner.*

Versus

The Divisional Forest Officer, Forest Division Suket at Sunder Nagar, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.K. Sharma, Adv.

For the Respondents. : Sh. Sanjeev Singh Rana, DDA

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Kalan Devi w/o Sh. Beli Ram, Village Bhawana, P.O. Jarol, Tehsil Sunder Nagar, Distt. Mandi, (H.P.) by the Divisional Forest Officer, Forest Division Suket at Sunder Nagar, District Mandi, H.P. from year, 1998 to till 2012 without complying with the provisions of the Industrial Disputes Act, 1947 as well retaining workers junior to her in service and allowing them to complete their 240 days of service in each year of service, is legal and justified? If not, what amount of back wages, seniority, past service benefits, compensation & other service benefits the aggrieved workman is entitled to from the employer?”

2. After receipt of the reference, notices were issued to the parties. The petitioner appeared and filed statement of claim on the averment that the petitioner was engaged as daily rated beldar by the respondent in Forest Division Suket (Kangu Range) at Sunder Nagar on 01- 12-1998. It is alleged that since her initial engagement, the petitioner was granted fictional breaks and not allowed to complete 240 days in each calendar year except in the year 2004 and she has been working with fictional breaks till date. It is alleged that she was given fictional breaks. But at the same time, junior persons to her, namely; S/Sh. Lal Chand, , Dola Ram, Jai Chand, Jagar Nath, Sohan Lal, Ashish, Angat Kumar and Smt. Indira Devi were allowed to complete 240 days in each calendar year by the respondent. It is alleged that in the mandays chart, the petitioner has been shown in the muster-roll, whereas she had worked otherwise also and cash payment was made through the bills and these are not been counted. Therefore, the fictional breaks are wrong and illegal. It is alleged that the petitioner raised industrial dispute by her demand notice dated 09-10-2009. Her Reference was made and registered in this Court as Reference No. 71/11, which was

wrongly made regarding termination of her services w.e.f. 06 09- 2009. Therefore, the petitioner sent a fresh demand notice dated 14-09- 2011, on which the present Reference was made and the earlier reference was withdrawn. It is alleged that there has been violation of the provisions of under Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. Hence, this reference.

3. After notice, the respondent appeared and has taken preliminary objection regarding maintainability. On merits, it is alleged that the petitioner had worked with the respondent intermittently, though, she was provided work for more than 240 days. But she absented herself. It is also alleged that the petitioner was engaged in the year 1998 and she was duly apprised by the field staff on account of non-availability of funds and work, it may not be possible to provide work for whole of the year. The services were co-terminus with the closer of the season. Therefore, on consent, the petitioner was engaged for seasonal activities of forest department i.e. plantation, fencing, fire season etc. It is alleged that whenever the petitioner prayed, her daily waged services have been utilized as per the mandays chart. It is alleged that there is no violation of the Act and it has prayed for dismissal of the claim.

4. On 27-12-2013, the following issues were framed:

4. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent during the years 1998 to 2012 is/was illegal and unjustified as alleged? ..*OPP.*

5. Whether the claim petition is not maintainable in the present form ? ..*OPR.*

6. Whether the petition is hit by the vice of delay and laches as alleged? ..*OPR.*

4. Relief.

5. I have heard the ld. AR/ counsel for the parties and have gone through the case file.

6. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief: Reference answered accordingly.

REASONS FOR FINDINGS

ISSUE NO. 1

7. The petitioner has filed her affidavit Ex.PW1/A in examinationin- chief, in which she has asserted the facts as pleaded. She has also claimed that some juniors were also regularized, who were allowed to complete 240 days in each calendar year. But she was given fictional breaks. She has filed a copy of demand notice dated 14-09-2011 Ex. PW1/B, copy of order dated 19-01-2013 Ex.PW1/C and copy of reference Ex. PW1/D. In his crossexamination, she has admitted that she was employed in 1998 and was working in the nursery. But denied that it was a seasonal work. She has admitted that she worked for more than 240 days. She has denied that she remained absent from duty, but volunteered that she was given breaks. She has admitted that when she used to be free, then he did agricultural work. She has denied that Sh. Lal Chand etc. worked regularly therefore, she cannot compare herself with them. She has denied that she was not removed from service.

8. In rebuttal to the above evidence, the respondent has examined RW1 Ajit Kumar, DFO, who has filed his affidavit Ex.RW1/A in examination-in-chief, by asserting the facts as pleaded. He has also filed the mandays chart Ex. RW1/B, copy of mandays chart of Sh. Lal Chand etc. Ex.RW1/C. In his cross-examination, he has admitted the seniority list Ex.P-A and that as per this list, the persons junior to the petitioner are still working. He has admitted that they used to give fictional breaks to the petitioner. He has admitted that Sh. Dola Ram and Sh. Ashish Kumar were regularized. He has stated that when the petitioner left the job, he did not issue notice to her to join the service. He had denied that the petitioner was removed from year 2009. He has stated that many daily wagers are still working. He has denied that the services of the petitioner were terminated unlawfully. This is what, the parties have led the evidence.

9. It has been submitted on behalf of the petitioner that after 07-09-2009, she was not taken on job and removed from service. But the respondent has denied that the petitioner was so removed.

10. I have heard the ld. Counsel for the parties and gone through the case file. The mandays chart Annexure R-I/ Ex.RW1/B, produced by the respondent shows that the petitioner had worked for less than 240 days in each calendar year except on 2004 and 2012 when she worked for more than 240 days. Though, mandays chart of other majdoors; Annexure R-II/ Ex.RW1/C shows that some workers, who are said to be junior to the petitioner, were shown to be working for more than 240 days in a year. The RW1 has not offered any explanation to this mandays chart Annexure R-II and Ex RW1/C and to show as to why the workmen, who were juniors to the petitioner were given work more than the petitioner. Ex RW1/C further shows that one Sh. Lal Chand working since 1999 (who is not shown to have worked in 1998), has been regularized, though, the petitioner was working since 1998. RW1 has also admitted that Sh. Dola Ram and Sh. Ashish Kumar were regularized, who were juniors to the petitioner.

11. The respondent has taken plea that the petitioner had absented herself from work, therefore, she could not be given the work. But, it appears that in the mandays chart Ex.RW1/B, the petitioner was given only less than 240 days work, so she agitated the matter and her earlier reference ExPW1/D (registered as Reference No. 71/2011 in this court) was withdrawn by her vide order Ex. PW1/C. Then in 2011 the Union also took up her matter through Ex.PW1/B demand notice, on which the present Reference was made. These facts show that the plea of the respondent that the petitioner did not want to work, is not proved on record. Rather, the respondent has not proved that any notice was ever sent to the petitioner to join the duty, if she had absented from duty. Therefore, it cannot be said that the petitioner had abandoned the job and was not interested to resuming the job. Had the petitioner been offered the work, then she would not have served the demand notice through the union or filed the case earlier.

12. There is thus, 'unfair labour practice' on the part of the respondent, in as much as, the junior have been given work more than 240 days. But the petitioner has not been allowed this much work to defeat her claim. Thus, the respondent has shown favoritism and allowed more work to one set of workmen. Therefore, the fictional breaks given to the petitioner did not seem to be justified, as juniors like Dola Ram and Ashish Kumar are admitted by RW1, to be regularized. Hence, my findings on issue No.1 is against the respondent and in favour of the petitioner.

ISSUE NO.2

13. It appears that the petition is maintainable and no infirmity in the form of the petition has been pointed out. In fact, the reference has been received from the appropriate Govt. and the petitioner has filed the statement of claim, which is maintainable. This issue is therefore, decided in favour of the petitioner and against the respondent.

14. It is not shown by the respondent as to why the petition is hit by delay and laches etc. The petitioner had filed the earlier petition in 2009 and then a demand notice was also sent by the Union, as discussed while disposing of Issue no. 1 above. There does not appear to be any delay in making the reference or raising the matter by the petitioner. Hence, my findings on the above issue is in the negative, against the respondent and in favour of the petitioner.

RELIEF

15. In view of the above discussion, it has to be held that the fictional breaks given to the petitioner did not seem to be justified. Therefore, the claim is allowed and reference answered accordingly in favour of the petitioner. The petitioner shall be deemed to be in the continuous service of the respondent with all consequential benefits, except back wages. She shall be considered for regularization by the respondent, at the time when her juniors are to be regularized or have already been regularised, as per the policy governing the daily wagers, as framed by the State Government and operative from time to time. In the peculiar facts of the case, the parties shall bear their own costs.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of August, 2014.

(J.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra, At Dharamshala, H.P.

IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT -CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref : No. : 293/2012

Date of Institution : 19-07-2012

Date of Decision : 11-08-2014

Sh. Sunil Kumar s/o Sh. Purshottam Dass, r/o Village Chunhal, P.O. Jhaniari Devi, Tehsil & Distt. Hamirpur, H.P.
Versus
..Petitioner.

2. The District Ayurvedic Officer, District Ayurvedic Hospital Hamirpur, H.P.

3. The Chairman-cum-Deputy Commissioner, Rogi Kalyan Samiti, Ayurvedic Hospital, Hamirpur, H.P.
..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR. Sh. Vijay Kaundal, Adv.

For the Respondents. : Sh. Sanjeev Singh Rana, DDA

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Sunil Kumar s/o Sh. Purshottam Dass, Village Chunhal, P.O. Jhaniari Devi, Tehsil & Distt. Hamirpur, H.P. by i) The District Ayurvedic Officer, District Ayurvedic Hospital, Hamirpur, H.P. ii) The Chairman-cum- Deputy Commissioner, Rogi Kalyan Samiti, Ayurvedic Hospital, Hamirpur, H.P. w.e.f. 01-12-2010 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back wages, seniority, past service benefits & compensation the above aggrieved workman is entitled to from above employer?”

2. After receipt of the reference, notices were issued to the parties. The petitioner appeared and filed statement of claim on the averment that the District Ayurvedic Welfare Committee has held Panchkarma Shivir under the chairmanship of Deputy Commissioner, Hamirpur, H.P. at District Ayurvedic Hospital, Hamirpur w.e.f. 25-09-2007 to 28-11-2007 and his name was sponsored by welfare committee to attend the same. It is alleged that after completion of Panchkarma Shivir, he was given certificate by the Deputy Commissioner, Hamirpur. It is alleged that the petitioner was engaged by the District Ayurvedic Officer in the capacity of Massager at Panchkarma Department w.e.f. 06-09-2008 up to 30-04-2010 and he was given monthly consolidated salary of ₹ 2000/-, which is less under the Minimum Wages Act, 1948, whereas the State Government has fixed the minimum wages of ₹ 100/- per day. Therefore, the petitioner is entitled to an amount of ₹24200/- for the said period. It is alleged that the government has constituted the Rogi Kalyan Samiti vide notification dated 13-08-2009, whereby the only sanction has been given for Panchkarma treatment and as per meeting held on 27-04-2010, the Aasptal Kalyan Samiti has been taken over by the Rogi Kalyan Samiti including its staff etc. It is alleged that the service of the petitioner was also taken over by the Rogi Kalyan Samiti w.e.f. 01-05-2010 and he continued worked under the Rogi Kalyan Samiti up-to 30-11-2010. It is alleged that the service of the petitioner was terminated by the District Ayurvedic Officer vide his letter dated 30-11-2010 w.e.f. 01-12-2010 without giving one month pay in lieu of notice period under Section 25-F(a) of the Industrial Disputes Act, 1947. Though, the applicant had completed more than 240 days from the date of his initial appointment. It is alleged that no show cause notice has been served upon the petitioner nor any inquiry had been conducted. It is alleged that the petitioner was appointed by the Chairman-cum-Deputy Commissioner, Rogi Kalyan Smiti, District Ayurvedic Hospital, Hamirpur, but his services were terminated by the non-appointing authority i.e. District Ayurvedic Officer, Hamirpur. It is alleged that the governing body of Rogi Kalyan Samiti is highly unjustified and arbitrary. Hence, the petitioner has claimed arrear amounting to ₹24200/- with 12% interest, with the direction to re-engage his services with back wages and consequential benefits. 3. In reply, the respondents have taken preliminary objections regarding maintainability, cause of action, delay, concealment of the material facts and non/mis-joinder of the necessary parties. On merits, holding of Panchkarma Shivir is admitted. It is alleged that the Panchkarma Shivir was organized by the District Ayurvedic Hospital, Hamirpur and funds sanctioned by the Deputy Commissioner, Hamirpur, in which no honorarium was paid to the petitioner. It is alleged that in the year 2007, there existed a Hospital Kalyan Samiti in District Ayurvedic Hospital, Hamirpur, which was registered body and had engaged services of the petitioner alongwith one Smt. Sudesh Kumari as Masseurs on 01-12-2007, to assist the regular staff of Ayurveda Department in the activities of Panchkarma. It is alleged that the petitioner had earlier joined Hospital Kalyan Samiti on the agreed terms and conditions of Masseurs dated 31-03-2008 on the same terms and condition

as per the resolution Annexure R-II dated 06-09-2008. It is alleged that the payments were made to the petitioner by the Hospital Kalyan Samiti, out of its own funds generated by its activities. Therefore, there is no violation of Minimum Wages Act, 1948 by the respondent and the petitioner is not entitled to arrear. It is alleged that the petitioner has not raised any industrial dispute with the Hospital Kalyan Samiti. It is alleged that the Rogi Kalyan Samiti for District Ayurvedic Hospital, Hamirpur was registered on 16-12-2008, but it is denied that it had taken over the Hospital Kalyan Samiti as both the societies are independent in their registration, aims and objects. However, the Rogi Kalyan Samiti continued the service of the petitioner and one Smt. Sudesh Kumari. Their matter was referred to the Director of Ayurveda for approval and sanction. But in the meanwhile, their remuneration was changed from consolidated of ₹.2000/- to the daily rate of ₹. 110/-. It is alleged that nothing was heard from the competent authority and thereafter the service of the petitioner was disengaged alongwith other, for want of requisite sanction and funds after 30-11-2010. It is alleged that on account of lack of sanction, the wages of the applicant w.e.f. 01-05-2010 to 30-11-2010 were paid out of the funds generated by activities of Rogi Kalyan Samiti through cheque dated 22-12-2010 amounting to ₹. 19,470/-. It is alleged that the continuation of the applicant from the inception of Rogi Kalyan Samiti was against the norms and without having due process of selection under the Rogi Kalyan Samiti as well as for want of requisite sanction from the competent authority. It is alleged that the respondent has not violated any provisions of the Industrial Disputes Act, 1947. Hence, the respondents have prayed for dismissal of the claim.

4. In the rejoinder filed by the petitioner, he has asserted his own case and denied that of the respondents.

5. On 30-04-2013, the following issues were framed:

7. Whether the termination of the services of the petitioner by the respondent w.e.f. 01 12-2010 is illegal and unjustified as alleged? . . .*OPP.*
8. Whether the petitioner has a cause of action? . . .*OPP.*
9. Whether the claim petition is not maintainable in the present form ? . . .*OPR.*
10. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? . . .*OPR.*
11. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . .*OPR.*
12. Whether the petitioner has concealed the true and material facts from the Court as alleged. If so, its effect? . . .*OPR.*

7. Relief.

6. I have heard the ld. AR/ counsel for the parties and have gone through the case file.

7. For the reasons detailed herein under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief : Reference answered accordingly.

REASONS FOR FINDINGS

ISSUE NO.1

8. It is alleged by the petitioner that his services were illegally terminated by the respondent w.e.f. 01-12-2010, therefore, he should be kept in service and given seniority etc. However, it is alleged by the respondent that the work of the Masseur in Panchkarma is being done by the regular staff, therefore, the person kept by the Hasptal Kalyan Samiti and Rogi Kalyan Samiti were not required and no new staff has been engaged in place of the petitioner and only old staff, which is regular staff, is doing the service.

9. To prove his case, the petitioner has appeared as PW1 and filed his affidavit Ex. PW1/A in examination-in-chief, in which he has asserted the facts as pleaded. He has alleged that he was appointed by Hasptal Kalyan Samiti, which was subsequently taken over by the Rogi Kalyan Samiti and District Ayurvedic Hospital, Hamirpur. It is also stated that the respondent has not followed the procedure before terminating his services. In his crossexamination, he could not tell whether the State did not interfere in Hasptal Kalyan Samiti, which is a registered society. He has admitted that they were engaged by the Hasptal Kalyan Samiti on 01-12-2007 at ₹ 2000/- per month honorarium, for Panchkarma activities. He has admitted that he accepted the appointment. He has admitted his appointment from 01-12-2007 to 31-03-2008 and thereafter from 06-09-2008, fresh appointment was made on the same terms. He had then worked from 27-10-2008 with the Hasptal Kalyan Samiti on the honorarium of ₹2000/- per month. He has admitted that in the meeting dated 27-04-2010 of the Rogi Kalyan Samiti, the decision was taken that the Director Ayurveda will decide about the filling of the post. He has denied that Smt. Sudesh Kumari was told that the future service would depend upon the sanction of the Director Ayurveda. He has admitted that he and Smt. Sudesh Kumari have been removed from the job on 31-11-2010 by the District Ayurvedic Officer, Hamirpur and he had been made payment from 01-11-2010 to 30-11-2010 through cheque. He could not tell whether the resolution dated 27-04-2010 was passed without any sanction. The petitioner has also examined PW2 Roshan Lal, who was working in the District Ayurvedic Hospital Kalyan Samiti, Hamirpur. He has claimed that Samiti has not appointed the petitioner and he was kept by the District Ayurvedic Hospital in Panchkarma department. He has stated that the income of the laboratory and panchkarma came into the account of society and they used to pay salary to the petitioner. Thereafter, in the year 2010 Panchkarma went to the Rogi Kalyan Samiti, with Deputy Commissioner, Hamirpur, as chairman. He has stated that in the meeting on 27-04-2010, it was decided that the petitioner should be kept on daily wages along with Smt. Sudesh Kumari in the District Ayurvedic Hospital, Hamirpur. He has denied that the petitioner was appointed by the Hasptal Kalyan Samiti on 01-12-2007 at ₹ 2000/- per month, which suggestion has been accepted by the petitioner. He could not tell, whether the petitioner was removed from service on 01-12-2010, as no sanction was received from the Director of Ayurveda. The petitioner has also tendered in evidence the documents. Ex. P-A is the copy of the forwarding letter, Ex. P-B is the copy of the information supplied under the R.T.I Act., Ex. P-C is the copy of the account statement.

9. In rebuttal to the above evidence, the respondent had examined RW1 Dr. Rajender Prashad Agnihotri, District Ayurvedic Officer, Hamirpur, who has filed his affidavit Ex. RW1/A in examination-in-chief, in which he has asserted the facts as pleaded. He has stated that the petitioner amongst others, participated in the Panchkarma Shivar on voluntary basis as Masseurs and no training was imparted. He has also stated that the earlier Hospital Kalyan Samiti in the year 2007 had engaged the service of the petitioner and the petitioner had joined the said Samiti of his free will. Thereafter, the petitioner was again engaged by the Rogi Kalyan Samiti on the same terms and conditions and he was paid ₹ 2000/- per month out of its own funds by the Samiti. Since the services of the petitioner's was engaged on fixed honorarium, there was no question of violation of Minimum Wages Act, 1948. It is also stated that the appointment of the petitioner was not on the regular basis. He has claimed that the petitioner is gainfully employed for his livelihood privately in the profession of agriculture. He had been authorized to appear in this case as Chairman-cum-Deputy Commissioner, Hamirpur as per authority letter Ex. RW1/B. He had filed a copy of registration certificate Ex. RW1/C, copy of proceeding Ex. RW1/D, copy of proceeding dated 06-09-2008 Ex. RW1/E, copy of letter dated 04-01-2013 Ex. RW1/F, copy of reply given by Roshan Lal Ex. RW1/G, copy of mandays chart of the petitioner Ex. RW1/H, copy of Rogi Kalyan Samiti registration certificate Ex. RW1/I, copy of memorandum of association Ex. RW1/J, copy of meeting of Rogi Kalyan Samiti dated 27-04-2010 Ex. RW1/K, copy of guidelines of Rogi Kalyan Samiti Ex. RW1/L, copy of under the detail of Rogi Kalyan Samiti Ex. RW1/M, copy of letter written by the petitioner to the Director Ayurvedic Himachal Pradesh Exs. RW1/N to RW1/Q, copy of office order dated 30-11-2010 Ex. RW1/R, copy of proceeding dated 05-04-2011 Ex. RW1/S and copy of letter written by the petitioner to the Deputy Commissioner, Hamirpur dated 13-12-2010 Ex. RW1/T. In his cross-examination, he has stated that Deputy Commissioner, Hamirpur is the Chairman of the Samiti, but he has claimed that Sh. Roshan Lal was the President of that Samiti. He has stated that in the Panchkarma Shivar, the people had voluntarily joined, though the Deputy Commissioner, Hamirpur had given money for organizing it. He has stated that the petitioner was kept as Masseur by Kalyan Samiti and not Ayurvedic Department. He has stated that doctors were appointed in the Hospital and the petitioner only used to assist the doctors. He has denied that the petitioner was re-engaged in service by the Ayurvedic department on 06-09-2008, but volunteered that he was kept by the Hospital Kalyan Samiti. He has stated that no private persons are working in the Panchkarma department and only regular employees are working. This is what, the parties have led in evidence.

10. The above evidence led by the parties show that the petitioner was not appointed by the Ayurvedic Department as daily wage, as stated by the PW1 and PW2, but he was initially appointed by the Hospital Kalyan Samiti and then engaged by the Rogi Kalyan Samiti, which are independent societies and not government departments, though, the Deputy Commissioner or Ayurvedic Officer may be its ex-officio Chairman and Member Secretary etc. The petitioner had relied on the certificate Ex. PW1/B issued by the Deputy Commissioner, Hamirpur. But the certificate shows that some training of 'Panchkarma Masseur' was imparted to the petitioner. It does not show that any degree course was done by the petitioner. The petitioner is thus, not proved to be a qualified 'Masseur' in the Panchkarma. The petitioner has not filed any record to show as to what was the qualification of 'Panchkarma Masseur' and that the certificate Ex. PW1/B was sufficient to join that post.

11. During the course of arguments Id. A.R. appearing for the petitioner has referred to the Rogi Kalyan Samiti Regulations regarding engaging staff; Ex. RW1/L. There is guideline to the Rogi Kalyan Samiti for making fresh recruitment out of own resources. The guidelines 2.1 provides that the decision regarding engagement of fresh contractual employees should be taken with care and at the highest level i.e. Governing Body and State Govt. There is one letter Ex. RW1/M filed by the respondents. It has been mentioned in this letter that the appointment of the petitioner was made without the name being sponsored by the Employment Exchange, nor any permission was taken from the government.

12. The petitioner has not proved that in his place, some new contract appointee has been kept by the Rogi Kalyan Samiti. The guideline No. 2.5.1 specifically provides that the distribution of work of para medical and ministerial staff of RKS should be assigned to existing government servants, who will do this work without any extra remuneration, failing which need based recruitment can be made. The document Ex.RW1/S, which is the record of the proceedings of the meeting of Rogi Kalyan Samiti dated 21.4.2011, shows that the petitioner and another were not being kept, as the Department has kept its Class-IV employees and such employees are being trained in Panchkarma at Jamnagar University, Shimla and Paprola. This shows that no fresh appointment has been made by the Rogi Kalyan Samiti, but the existing regular Class-IV employees of the Department are looking after the work, which action is in line with the guideline No. 2.5.1, noted above.

13. Even otherwise, from the record filed by the petitioner as obtained through RTI or as filed by the respondent, shows that the appointment of the petitioner was not on regular basis, against any sanctioned post. Ex. PB i.e. the record supplied under RTI and mandays charts Exts. RW1/H and M, shows that the petitioner worked from 01.2.2008 to 31.3.2008, then from 27.10.2008 to 30.4.2010 with the Hospital Kalyan Samiti and payments are shown to have been made by the Hasptal/Hospital Kalyan Samiti on fixed honorarium of ₹2000/-. Thereafter, the petitioner is shown to have worked with the Rogi Kalyan Samiti from 01.5.2010 to 31.11.2010 and he has been made payment as reflected in Ex. RW1/M. The above record thus, shows that the District Ayurvedic Officer had not employed the petitioner against any sanctioned post, but the Hasptal Kalyan Samiti and the Rogi Kalyan Samiti had taken the services of the petitioner on contract basis.

14. The guidelines Ex. RW1/L, referred to by the petitioner regarding the appointment of staff on contract basis, shows that it nowhere provided for the regular appointment of the employees by the Rogi Kalyan Samiti. The guideline No.2.5.1 specifically provides that existing government servants will do the work of RKS without any extra remuneration, failing which need based recruitment can be made. The guidelines 2.1 provides that the decision regarding engagement of contractual employees has to be taken at the highest level i.e. Governing Body and State Govt. Thus, the decision regarding engagement of the contractual employees has to be taken at the level of the Governing body and the State Government and not by the respondents.

15. It is not disputed that the Rogi Kalyan Samiti intended to continue the contractual appointment of the petitioner and addressed the letters to the Director of Ayurveda, which are Exts. RW1/N, O, P and Q, but it seems that the government had not approved the proposal. Therefore, the appointment of the petitioner being on contractual basis, it cannot be contended on behalf of the petitioner that he was daily wage worker and his case was covered under the provisions of Sections 25-F and 25-H of the Act. Because on the expiration of the contract appointment, if the appointment is not continued, as has been done in this case through office order Ex.RW1/R, then it would not give cause of action to the workman. It has also come in this case that the department had already mentioned through one letter Ex.RW1/M that the appointment of the petitioner was done without following the rules and without getting the names sponsored from the employment exchange. Therefore, the engagement of the petitioner cannot be said to be made by following rules. Therefore, he could not agitate that he was in continued employment by the Rogi Kalyan Samiti. Furthermore, in case of contractual appointments, the workman cannot complain the violation of the provisions of Sections 25-F and 25-H of the Act as noted above.

16. In Harmohinder Singh vs. Kharga Canteen, Ambala Cantt, 2001 LLR 849 (SC), the services of the workman were terminated on completion of contractual period. Therefore, it was held that it did not amount to retrenchment and provisions of under Section 25-F of the Act did not apply in such a case. Further, in Bhogpur Co-Operative Sugar Mills Ltd. vs. Harmesh Kumar, 2006

(111) FLR 1202 (SC), it was held by the Hon'ble Supreme Court that the termination of services of a workman as a result of non-renewal of the contract of employment on its expiry, would not attract the definition of the term 'retrenchment'.

17. After considering the entire record, the termination of the services of the petitioner are not illegal and unjustified. Hence, my findings on issue No.1 is against the petitioner and in favour of the respondent.

ISSUE NO.2

18. In view of the above issue No.1, it appears that the petitioner has no cause of action. Therefore this issue is decided against the petitioner and in favour of the respondent.

ISSUE NO.3

19. It is not shown by the respondent as to what was infirmity in the form of the claim. In fact, the reference has been received from the appropriate Govt. and the petitioner has filed the statement of claim, which appears to be maintainable. No submissions have been made in this regard. Therefore, this issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

20. It is not shown by the respondent as to how the petition is hit by delay and laches etc. The petitioner had filed its demand notice dated 09-01-2012 and thereafter considering the same, the appropriate Government has made the Reference to this court. There does not appear to be any delay etc. in this matter. Hence, my findings on the above issue is in the negative, against the respondent and in favour of the petitioner.

ISSUE NO.5

21. It is alleged that the petition is bad for non-joinder of the necessary parties i.e. Rogi Kalyan Samiti and Hospital/Hasptal Kalyan Samiti. However, it appears to this court that the appropriate Government has made Reference against the District Ayurvedic Officer and Chairman District Rogi Kalyan Samiti, Hamirpur. It is well settled that in the Reference, the court cannot add any new party nor the petitioner can add any new party. Therefore, there is no question of the non-joinder of the necessary parties. Therefore, this issue is decided against the respondent and in favour of the petitioner.

ISSUE NO.6

22. It is not shown by the respondents as to what facts have been withheld by the petitioner from the court. Neither any evidence has been led nor any submissions have been made in this behalf by the respondents. Therefore, this issue is also decided against the respondent and in favour of the petitioner.

RELIEF:

23. In view of the above discussion, it has to be held that the petitioner has not been able to prove that his services were illegally terminated by the respondents. Therefore, the claim is dismissed and reference is answered accordingly against the petitioner. In the peculiar facts of the case, the parties to bear their own costs.

24. A copy of this Award be sent to the appropriate Government for publication in the official Gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of August, 2014.

(J.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref No. : 19/2014

Date of Institution : 09.1.2014

Date of Decision : 09.09.2014

Shri Balvir Singh s/o Shri Dhani Ram, r/o Village Matkheru, P.O. Drubbal, Tehsil Joginder
Nagar, District Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.
. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.K. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Balvir Singh, S/O Shri Dhani Ram, R/O Village Matkheru, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. during the year 2000 to 2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After notice, the parties appeared. The petitioner has filed his statement of claim by alleging that he was engaged as a daily rated beldar by the respondent in its National Highway Division, Joginder Nagar from 25.9.2000 and later he worked with the respondent in the newly created HPPWD Division in 2004. But he was given fictional breaks from time to time from his initial engagement till 31.7.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month. But, his juniors were not given such

breaks and they were alleged to have completed 240 days in each calendar year, who are namely; Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. Thus, the juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for short). The petitioner thus has filed a demand notice with the labour department, but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

3. The respondent in his reply has taken the preliminary objection regarding maintainability. On merits, the engagement of the petitioner from September, 2000 is admitted. It is denied that the petitioner has been granted fictional breaks up-to 31.8.2007. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III. It is alleged that all the workers in the annexure R-III were senior to the petitioner who have been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work, was strictly in accordance with the policy of 'last come first go'. It is admitted that the certain references were also decided by this Court, but, the facts of those cases are different. In all, respondent has denied the case of the petitioner and prayed for rejecting the claim.

4. No rejoinder has been filed by the petitioner.

5. On 12.05.2014, following issues were framed:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent from the year 2000 to 2007 is/was illegal and unjustified as alleged? . . . *OPP.*
2. Whether the claim petition is not maintainable in the present form? . . . *OPR.*
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . . *OPR.*
4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? . . . *OPR.*
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Relief. : Reference answered accordingly.

REASONS FOR FINDINGS**ISSUE NO.1**

8. It is alleged by the petitioner that during the period from 2000 to 2007, he was given fictional breaks and he was thus, not allowed to complete 240 days in 12 calendar months, whereas his juniors were allowed more than 240 days work in 12 calendar months and they are now been regularized. The petitioner was appointed in the year 2000 as per his pleadings. Though, the respondent has alleged that the petitioner did not work for 240 days and he remained absent on many occasions. It is also averred on behalf of the respondent that after the year 2007, more than 240 days work has been provided to the petitioner also.

9. To prove the respective cases, the petitioner has himself appeared as PW1 and filed his affidavit of examination-in-chief Ex. PW1/A, in which he has specifically claimed that the breaks given to him from the year 2000 to 2007 were illegal and arbitrary, as no such breaks had been given to the other similarly situated workers. In his cross-examination, he has admitted that he has been provided more than 240 days of work after September, 2007. This means the dispute is only for the years 2000 to 2007, as stated in the affidavit.

10. The respondent had examined Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar, who has claimed that the petitioner used to remain absent from duty, though, the muster roll used to be issued in his favour. He has filed the mandays chart Ex.RW1/C, which shows that right from the year 2000 to 2006, less than 240 days of work was given to him. Though, after 2007, muster roll for more than 240 days was issued. He has stated that the HPPWD Division Joginder Nagar was opened in the year 2004 and from the year 2003 to 2004, the petitioner has worked in National Highway Division. In this regard, he has filed notifications Ex.RW1/A and Ex. RW1/B. He has also stated that the mandays chart of daily waged regularized workers is Ex. RW1/D. But he has claimed that these workers were working in different Sub Divisions, which were more than eight kilometers beyond Joginder Nagar. He has stated that since the petitioner did not fulfill the criteria, therefore, he was not regularized. In his cross-examination, he has admitted that the daily waged workers are not issued the appointment letter nor any terms and conditions are settled. He has denied that the breaks were intentionally given to the petitioner till 2007. He has admitted that the workmen mentioned in Ex. RW1/D have since been regularized.

11. On the basis of the above evidence, it has been submitted on behalf of the petitioner that the petitioner was given intentional breaks from 2000 to 2007 and he could not complete 240 days of work in 12 calendar months. But the similarly situated workmen mentioned in Ex. RW1/D had completed their 240 days and were regularized. But the Id. Dy. D.A. for the respondent has submitted that since the petitioner did not work for more than 240 days, therefore, he could not be considered under the scheme.

12. The perusal of the document Ex. RW1/D shows that the workmen who had been employed in the year 2000 onwards and regularized are at serial No.2 and 3. The petitioner has also claimed himself to be employed in 2000, though, in the suggestion given by the respondent, it had come that he had worked from 2000 to 2004 in the National Highway Division also. However, the perusal of the above document shows that no other worker except the petitioner was given less work till the year 2007 and other workers were being given more than 240 days in 12 calendar months and they have been regularized. Thus, the petitioner could have also been provided more than 240 days of work and his case was to be considered along-with similarly situated workmen. The plea of the respondent cannot be accepted that the petitioner absented from the work. There is nothing in the record to show that the respondent had issued any notice to the petitioner, asking him to join the duties or taken any other action, if he himself absented, despite the muster roll having

been issued to him for 20 days or more. Rather, Ex. RW1/C shows that right from the year 2000 to the year 2006, the muster roll for 15 days in a month was issued. But, in the year 2007, the muster roll for 30 days was being issued. But, it is not shown why the other workmen as mentioned in Ex. RW1/D, were issued muster roll for more days. There is also nothing in this documents to show that the workmen mentioned in Ex. RW1/D were serving in some other Division, so that they can be given more work than the petitioner. No record has been filed by the respondent to show that the workmen employed along-with the petitioner were also given less than 240 days of work in 12 calendar months. This means that the petitioner had not been provided work for more than 240 days in 12 calendar months, whereas the similarly situated workmen had been provided more work and their services have since been regularized. But, the petitioner seems to have been discriminated with, for no reasons whatsoever. Therefore, the action on the part of the respondent amounts to unfair labour practice.

13. In view of the above discussions, it appears that the respondent could not have discriminated between the similarly situated workmen. Therefore, the petitioner is also entitled to be considered for regularization along-with the other similarly situated workmen, as the petitioner was intentionally given the breaks, which cannot be justified by the respondent. Therefore, the petitioner shall also be deemed to be in continuous service by the respondent like the similarly situated workmen and his case shall also be considered by the respondent for regularization as per the government policy. In view of the above discussions, my findings on the issue No.1 is in the affirmative, in favour of the petitioner and against the respondent.

ISSUE NO.2

14. It appears that the petition is maintainable and no infirmity in the form of the petition has been pointed out. In fact, the reference has been received from the appropriate Govt. and the petitioner has filed the statement of claim, which is maintainable. This issue is therefore, decided in favour of the petitioner and against the respondent.

ISSUE NO.3

15. It is alleged that the petition is bad for non-joinder of the necessary parties i.e. The Executive Engineer, B&R Division HPPWD, Joginder Nagar. However, it appears to this court that the appropriate Government has made Reference against the Executive Engineer, B&R Division HPPWD, Joginder Nagar. It is well settled that in the Reference, the court cannot add any new party nor the petitioner can add any new party. Furthermore, there was only one Division of National Highways, which was also looking after PWD wing and as per Ex.RW1/A, the NH and PWD wings were separated. Therefore, there is no question of the non-joinder of the necessary parties. Therefore, this issue is decided against the respondent and in favour of the petitioner.

ISSUE NO.4

16. There is no delay in filing the claim, though, only suggestion was given to the petitioner that he had filed the claim late, but no evidence has been led by the respondent in this regard. The petitioner has been still serving the respondent and after 2007, he was given more than 240 days of work in 12 calendar months. But similarly situated workmen had been shown to be regularized, but he was not regularized. Therefore, he had taken up the matter with the labour department. Had the other workmen been regularized much prior to the petitioner taking up the matter with the labour department, there would have been delay and laches, in which case also the claim cannot be rejected though, the relief can be moulded. Hence, my finding on the above issue is in the negative, against the respondent and in favour of the petitioner.

RELIEF:

17. In view of the above discussion, it has to be held that the fictional breaks given to the petitioner did not seem to be justified. Therefore, the claim is allowed and reference answered accordingly in favour of the petitioner. The petitioner shall be deemed to be in the continuous service of the respondent, with all consequential benefits, except back wages. He shall be considered for regularization by the respondent, at the time when his juniors have been regularised, as per the policy governing the daily wagers, as framed by the State Government and operative from time to time. In the peculiar facts of the case, the parties shall bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of September, 2014.

(J.K. SHARMA).
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref No. : 25/2014

Date of Institution : 20.1.2014

Date of Decision : 09.09.2014

Smt. Premi Devi w/o Shri Mahant Ram, r/o Village Arath, P.O. & Tehsil Joginder Nagar,
 District Mandi, H.P. *. .Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.
. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Premi Devi, W/O Shri Mahant Ram, R/O Village Arath, P.O. & Tehsil Joginder Nagar, District Mandi, H.P. during the year 2001 to 2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After notice, the parties appeared. The petitioner has filed the statement of claim by averring that she was engaged by the respondent in the year 2000, on muster roll as daily waged basis where she worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar, though, no appointment letter was given. It is alleged that the services of the petitioner were engaged by the respondent for 15, 18 or 20 days in every months instead of full month and she was thus, given fictional breaks, which continued up-to 30.9.2007. But, thereafter, the services of the petitioner were engaged for continuously without break, as per the instructions of the Principal Secretary (PW) to the Government of Himachal Pradesh, vide his letter No.PBW AH(1)-6/2003, dated 14.9.2007. It is alleged that the persons working with the petitioner and even the juniors of the petitioner, were engaged continuously without any breaks. It is alleged that at the time of giving fictional breaks, the principle of ‘last come first go’ was not followed and as such the persons namely Rajinder Singh, Subhash Chand, Sumer Singh, Sanjeev Kumar, Gudi Devi, Prithi Pal, Rajinder Pal, Dalip Singh, Gautam Ram, Bhawani Ram and Ram Dhan have been engaged by the respondent without any breaks in violation of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for short). Therefore, the period of break should be counted as continuous service under Section 25-B of the Act. It is alleged that this Court has already decided the reference No.23/2010 titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath. Therefore, she is also entitled for regularization in view of the case of Mool Raj Upadhaya and the matter for seniority, wages etc.

3. The respondent in its reply has taken the preliminary objections regarding maintainability, non-joinder of necessary party and delay and laches. On merits, the engagement of the petitioner has not been disputed. But, it is alleged that the work was made available to the petitioner as per requirement of the work and availability of the funds. It is alleged that at the time of engagement of the petitioner, she was made aware about this fact. It is alleged that the petitioner was an intermittent worker and she used to report for duty as per her own requirement of the work. It is alleged that the other workers as per mandays chart annexure R-3 were regularized as per their seniority and continuous working for more than 240 days in the respective years. It is alleged that the case of the Mool Raj Upadhaya is not applicable to the facts of this case. It is alleged that the petitioner has been regularized as per the subsequent policy applicable in her case. The respondent has thus, prayed for rejecting the claim.

4. No rejoinder has been filed by the petitioner.

5. On 12.05.2014, following issues were framed:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent from the year 2001 to 2007 is/was illegal and unjustified as alleged? . . . *OPP.*

2. Whether the claim petition is not maintainable in the present form? . . . *OPR.*

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . . OPR.
4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? . . . OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Relief : Reference answered accordingly.

REASONS FOR FINDINGS

ISSUE NO.1

8. It is alleged by the petitioner that during the period from 2001 to 2007, she was given fictional breaks and she was thus, not allowed to complete 240 days in a 12 calendar months, whereas her juniors were allowed more than 240 days work in a 12 calendar months and they are now been regularized. The petitioner was appointed in the year 2000 as per her pleadings. Though, the respondent has alleged that the petitioner did not work for 240 days and she remained absent on many occasions. It is also averred on behalf of the respondent that after the year 2007, more than 240 days work has been provided to the petitioner also.

9. To prove the respective cases, the petitioner has herself appeared as PW1 and filed her affidavit of examination-in-chief Ex. PW1/A, in which she has specifically claimed that the breaks given to her from the year 2000 to 2007 were illegal and arbitrary, as no such breaks had been given to the other similarly situated workers. In her cross-examination, she has admitted that she has been provided more than 240 days of work after September, 2007. This means the dispute is only for the years 2000 to 2007, as stated in the affidavit.

10. The respondent had examined Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar, who has claimed that the petitioner used to remain absent from duty, though the muster roll used to be issued in her favour. He has filed the mandays chart Ex. RW1/C, which shows that right from the year 2001 to 2006, less than 240 days of work was given to her. Though, after 2007, muster roll for more than 240 days was issued. He has stated that the HPPWD Division Joginder Nagar was opened in the year 2004 and from the year 2000 to 2004, the petitioner has worked in National Highway Division and in this regard he has filed notifications Ex. RW1/A and Ex. RW1/B. He has also stated that the mandays chart of daily waged workers, who have now been regularized is Ex. RW1/D. But he has claimed that these workers working in different Sub Divisions, which were more than eight kilometers beyond Joginder Nagar. He has stated that since the petitioner did not fulfill the criteria, therefore, she was not regularized. In his

cross-examination, he has admitted that the daily waged workers are not issued the appointment letter nor any terms and conditions are settled. He has denied that the breaks were intentionally given to the petitioner till 2007. He has admitted that the workmen mentioned in Ex. RW1/D have since been regularized. He has admitted that the State Government had also issued the letter Ex. PX for not giving the breaks to the workmen.

11. On the basis of the above evidence, it has been submitted on behalf of the petitioner that the petitioner was given intentional breaks from 2001 to 2006 and she could not complete 240 days of work in 12 calendar months. But the similarly situated workmen mentioned in Ex. RW1/D had completed their 240 days and were regularized. But the Id. Dy. D.A. for the respondent has submitted that since the petitioner did not work for more than 240 days, therefore, she could not be considered under the scheme.

12. The perusal of the document Ex. RW1/D shows that the workmen who had been employed in the year 2001 onwards are at serial No.6 to 11. The petitioner has also claimed himself to be employed in 2000. The perusal of the above document shows that the other workers at serial No.6 to 11 were given more than 240 days of work and regularized as per the government policy. But the petitioner who was senior was given less than 240 days work in 12 calendar months and thus, not regularized. The petitioner, being senior, could have also been provided more than 240 days of work and her case was to be considered along-with similarly situated workmen. The plea of the respondent cannot be accepted that the petitioner absented from the work. There is nothing in the record to show that the respondent had issued any notice to the petitioner, asking her to join the duties, if she herself absented despite the muster roll having been issued to her for 15, 20 or 30 days, as shown in Ex. RW1/C. Rather, this document shows that right from the year 2001 to the year 2006, the muster roll for 15, 19 or on one occasion for 28 days in a month was issued. But, after September, 2007, the muster roll for 30/31 days was being issued. But, it is not shown why the other workmen as mentioned in Ex. RW1/D, were issued muster roll for more days. There is also nothing in this document to show that the workmen mentioned in Ex. RW1/D were serving in some other Division, so that they can be given more work than the petitioner. No record has been filed by the respondent to show that the workmen employed along-with the petitioner were also given less than 240 days of work in 12 calendar months. This means that the petitioner had not been provided work for more than 240 days in 12 calendar months, whereas the similarly situated workmen had been provided more work and their services have since been regularized. Thus, the petitioner seems to have been discriminated with, for no reasons whatsoever. Therefore, the action on the part of the respondent amounts to unfair labour practice.

13. In view of the above discussions, it appears that the respondent could not have discriminated the similarly situated workmen. Therefore, the petitioner is also entitled to be considered for regularization along-with the other similarly situated workmen, as the petitioner was intentionally given the breaks, which cannot be justified by the respondent. Therefore, the petitioner shall also be deemed to be in continuous service by the respondent like the similarly situated workmen and her case shall also be considered by the respondent for regularization as per the government policy. In view of the above discussions, my findings on the issue No.1 is in the affirmative, in favour of the petitioner and against the respondent.

ISSUE NO. 2

14. It appears that the petition is maintainable and no infirmity in the form of the petition has been pointed out. In fact, the reference has been received from the appropriate Govt. and the petitioner has filed the statement of claim, which is maintainable. This issue is therefore, decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. It is alleged that the petition is bad for non-joinder of the necessary parties i.e. The Executive Engineer, B&R Division HPPWD, Joginder Nagar. However, it appears to this court that the appropriate Government has made Reference against the Executive Engineer, B&R Division HPPWD, Joginder Nagar. It is well settled that in the Reference, the court cannot add any new party nor the petitioner can add any new party. Therefore, there is no question of the non-joinder of the necessary parties. Therefore, this issue is decided against the respondent and in favour of the petitioner.

ISSUE NO.4

16. There is no delay in filing the claim, though, only suggestion was given to the petitioner that she had filed the claim late, but no evidence has been led by the respondent in this regard. The petitioner has been still serving the respondent and after 2007, she was given more than 240 days of work in 12 calendar months. But similarly situated workmen had been shown to be regularized. Since, the petitioner is still working with the respondent, the question of delay becomes academic only, having no effect on the merits of the case. Hence, my finding on the above issue is in the negative, against the respondent and in favour of the petitioner.

RELIEF:

17. In view of the above discussion, it has to be held that the fictional breaks given to the petitioner did not seem to be justified. Therefore, the claim is allowed and reference answered accordingly in favour of the petitioner. The petitioner shall be deemed to be in the continuous service of the respondent with all consequential benefits, except back wages. She shall be considered for regularization by the respondent, at the time when her juniors are said to be regularized, as per the policy governing the daily wages, as framed by the State Government and operative from time to time. In the peculiar facts of the case, the parties shall bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of September, 2014.

(J.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref No. : 27/2014

Date of Institution : 20.1.2014

Date of Decision : 09.09.2014

Shri Nag Pal s/o Shri Hari Singh, r/o Village Banad, P.O. Dul, Tehsil Joginder Nagar,
District Mandi, H.P. *.Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.
.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Nag Pal, S/O Shri Hari Singh, R/O Village Banad, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during January, 2004 to 2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After notice, the parties appeared. The petitioner has filed the statement of claim by averring that he was engaged by the respondent w.e.f. November, 2003, on muster roll as daily waged basis where he worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar, though, no appointment letter was given. It is alleged that the services of the petitioner were engaged by the respondent for 15, 18 or 20 days in every months instead of full month and he was thus, given fictional breaks, which continued up-to 30.9.2007. But, thereafter, the services of the petitioner were engaged for continuously without break, as per the instructions of the Principal Secretary (PW) to the Government of Himachal Pradesh, vide his letter No.PBW AH(1)-6/2003, dated 14.9.2007. It is alleged that the persons working with the petitioner and even the juniors of the petitioner, were engaged continuously without any breaks. It is alleged that at the time of giving fictional breaks, the principle of ‘last come first go’ was not followed and as such the persons namely Rajinder Singh, Subhash Chand, Sumer Singh, Sanjeev Kumar, Gudi Devi, Prithi Pal, Rajinder Pal, Dalip Singh, Gautam Ram, Bhawani Ram and Ram Dhan have been engaged by the respondent without any breaks in violation of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for short). Therefore, the period of break should be counted as continuous service under Section 25-B of the Act. It is alleged that this

Court has already decided the reference No.23/2010 titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath. Therefore, he is also entitled for regularization in view of the case of Mool Raj Upadhaya and the matter for seniority, wages etc.

3. The respondent in its reply has taken the preliminary objections regarding maintainability, non-joinder of necessary party and delay and laches. On merits, the engagement of the petitioner has not been disputed. But, it is alleged that the work was made available to the petitioner as per requirement of the work and availability of the funds. It is alleged that at the time of engagement of the petitioner, he was made aware about this fact. It is alleged that the petitioner was an intermittent worker and he used to report for duty as per his own requirement of the work. It is alleged that the other workers as per mandays chart annexure R-3 were regularized as per their seniority and continuous working for more than 240 days in the respective years. It is alleged that the case of the Mool Raj Upadhaya is not applicable to the facts of this case. It is alleged that the petitioner has been regularized as per the subsequent policy applicable in his case. The respondent has thus, prayed for rejecting the claim.

4. No rejoinder has been filed by the petitioner.

5. On 12.05.2014, following issues were framed:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent from the year 2004 to the year 2007 is/was illegal and unjustified as alleged? . . . *OPR.*

2. Whether the claim petition is not maintainable in the present form? . . . *OPR.*

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . . *OPR.*

4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? . . . *OPR.*

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Relief. : Reference answered accordingly.

REASONS FOR FINDINGS

ISSUE NO.1

8. It is alleged by the petitioner that during the period from 2004 to 2007, he was given fictional breaks and he was thus, not allowed to complete 240 days in a 12 calendar months, whereas his juniors were allowed more than 240 days work in a 12 calendar months and they are

now been regularized. The petitioner was appointed in the year 2003 as per his pleadings. Though, the respondent has alleged that the petitioner did not work for 240 days and he remained absent on many occasions. It is also averred on behalf of the respondent that after the year 2007, more than 240 days work has been provided to the petitioner also.

9. To prove the respective case, the petitioner has himself appeared as PW1 and filed his affidavit of examination-in-chief Ex. PW1/A, in which he has specifically claimed that the breaks given to him from the year 2004 to 2007 were illegal and arbitrary, as no such breaks had been given to the other similarly situated workers. In his cross-examination, he has admitted that he has been provided more than 240 days of work after September, 2007. This means the dispute is only for the years 2004 to 2007, as stated in the affidavit.

10. The respondent had examined Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar, who has claimed that the petitioner used to remain absent from duty, though the muster roll used to be issued in his favour. He has filed the mandays chart Ex. RW1/C, which shows that right from the year 2004 to 2007, less than 240 days of work was given to him. Though, after 2007, muster roll for more than 240 days was issued. He has stated that the HPPWD Division Joginder Nagar was opened in the year 2004 and from the year 2003 to 2004, the petitioner has worked in National Highway Division and in this regard he has filed notifications Ex. RW1/A and Ex. RW1/B. He has also stated that the mandays chart of daily waged workers, who have now been regularized is Ex. RW1/D. But he has claimed that these workers working in different Sub Divisions, which were more than eight kilometers beyond Joginder Nagar. He has stated that since the petitioner did not fulfill the criteria, therefore, he was not regularized. In his cross-examination, he has admitted that the daily waged workers are not issued the appointment letter nor any terms and conditions are settled. He has denied that the breaks were intentionally given to the petitioner till 2007. He has admitted that the workmen mentioned in Ex. RW1/D have since been regularized. He has admitted that the State Government had also issued the letter Ex. PX for not giving the breaks to the workmen.

11. On the basis of the above evidence, it has been submitted on behalf of the petitioner that the petitioner was given intentional breaks from 2004 to 2007 and he could not complete 240 days of work in 12 calendar months. But the similarly situated workmen mentioned in Ex. RW1/D had completed their 240 days and were regularized. But the Id. Dy. D.A. for the respondent has submitted that since the petitioner did not work for more than 240 days, therefore, he could not be considered under the scheme.

12. The perusal of the document Ex. RW1/D shows that the workmen who had been employed in the year 2004 onwards are at serial No.10 and 11. The petitioner has also claimed himself to be employed in 2003, though in the suggestion given by the respondent, it had come that he had worked from 1999 to 2004 in the National Highway Division also, though, it is not the case of the petitioner. But, he had claimed that the breaks given to him from 2004 to 2007, were illegal. However, the perusal of the above document shows that no other worker except Smt. Gudi Devi, was given less work in the year 2003 and other workers were given more than 240 days in 12 calendar months and they have been regularized. But, even if it is taken that the petitioner worked from 2004 onwards, then he could have also been provided more than 240 days of work and his case was to be considered along-with similarly situated workmen. The plea of the respondent cannot be accepted that the petitioner absented from the work. There is nothing in the record to show that the respondent had issued any notice to the petitioner, asking him to join the duties or taken any other action, if he himself absented despite the muster roll having been issued to him for 15 days, as shown in Ex. RW1/C. Rather, this document shows that right from the year 2004 to the year 2006, the muster roll for 15 days in a month was issued. But, in the year 2007, after September, 2007, the muster roll for 30/31 days was being issued. But, it is not shown why the

other workmen as mentioned in Ex. RW1/D, were issued muster roll for more days. There is also nothing in this document to show that the workmen mentioned in Ex. RW1/D were serving in some other Division, so that they can be given more work than the petitioner. No record has been filed by the respondent to show that the workmen employed along-with the petitioner were also given less than 240 days of work in 12 calendar months. This means that the petitioner had not been provided work for more than 240 days in 12 calendar months, whereas the similarly situated workmen had been provided more work and their services have since been regularized. But, the petitioner seems to have been discriminated with, for no reasons whatsoever. Therefore, the action on the part of the respondent amounts to unfair labour practice.

13. In view of the above discussions, it appears that the respondent could not have discriminated the similarly situated workmen. Therefore, the petitioner is also entitled to be considered for regularization along-with the other similarly situated workmen, as the petitioner was intentionally given the breaks, which cannot be justified by the respondent. Therefore, the petitioner shall also be deemed to be in continuous service by the respondent like the similarly situated workmen and his case shall also be considered by the respondent for regularization as per the government policy. In view of the above discussions, my findings on the issue No.1 is in the affirmative, in favour of the petitioner and against the respondent.

ISSUE NO.2

14. It appears that the petition is maintainable and no infirmity in the form of the petition has been pointed out. In fact, the reference has been received from the appropriate Govt. and the petitioner has filed the statement of claim, which is maintainable. This issue is therefore, decided in favour of the petitioner and against the respondent.

ISSUE NO.3

15. It is alleged that the petition is bad for non-joinder of the necessary parties i.e. The Executive Engineer, B&R Division HPPWD, Joginder Nagar. However, it appears to this court that the appropriate Government has made Reference against the Executive Engineer, B&R Division HPPWD, Joginder Nagar. It is well settled that in the Reference, the court cannot add any new party nor the petitioner can add any new party. Therefore, there is no question of the non-joinder of the necessary parties. Therefore, this issue is decided against the respondent and in favour of the petitioner.

ISSUE NO.4

16. There is no delay in filing the claim, though, only suggestion was given to the petitioner that he had filed the claim late, but no evidence has been led by the respondent in this regard. The petitioner has still been serving the respondent and after 2007, he was given more than 240 days of work in 12 calendar months. But similarly situated workmen had been shown to be regularized, but he was not regularized. Since, the petitioner is still working with the respondent, the question of delay becomes academic only. Hence, my finding on the above issue is in the negative, against the respondent and in favour of the petitioner.

RELIEF:

17. In view of the above discussion, it has to be held that the fictional breaks given to the petitioner did not seem to be justified. Therefore, the claim is allowed and reference answered accordingly in favour of the petitioner, to the extent above. The petitioner shall be deemed to be in the continuous service of the respondent with all consequential benefits, except back wages. His

case shall be considered for regularization by the respondent from the time when similarly situated workmen have been regularised, as per the policy governing the daily wagers, as framed by the State Government and operative from time to time. In the peculiar facts of the case, the parties shall bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of September, 2014.

(J.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,
KANGRA AT DHARAMSHALA, H.P.**

Ref No. : 59/2014
Date of Institution : 22-2-2014
Date of Decision : 09-09-2014

Shri Partap Singh s/o Shri Govind Ram, r/o Village Patt, P.O. Dul, Tehsil Joginder Nagar,
District Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Partap Singh, S/O Shri Govind Ram, R/O Village Patt, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during 1999 to 2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District

Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After notice, the parties appeared. The petitioner has filed the statement of claim by averring that he was engaged by the respondent in the year 1999, on muster roll as daily waged basis where he worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar, though, no appointment letter was given. It is alleged that the services of the petitioner were engaged by the respondent for 15, 18 or 20 days in every months instead of full month and he was thus, given fictional breaks, which continued up-to 30.9.2007. But, thereafter, the services of the petitioner were engaged for continuously without break, as per the instructions of the Principal Secretary (PW) to the Government of Himachal Pradesh, vide his letter No.PBW-AH(1)-6/2003, dated 14.9.2007. It is alleged that the persons working with the petitioner and even the juniors of the petitioner, were engaged continuously without any breaks. It is alleged that at the time of giving fictional breaks, the principle of 'last come first go' was not followed and as such the persons namely Rajinder Singh, Subhash Chand, Sumer Singh, Sanjeev Kumar, Gudi Devi, Prithi Pal, Rajinder Pal, Dalip Singh, Gautam Ram, Bhawani Ram and Ram Dhan have been engaged by the respondent without any breaks in violation of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for short). Therefore, the period of break should be counted as continuous service under Section 25-B of the Act. It is alleged that this Court has already decided the reference No.23/2010 titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath. Therefore, he is also entitled for regularization in view of the case of Mool Raj Upadhaya and the matter for seniority, wages etc.

3. The respondent in its reply has taken the preliminary objections regarding maintainability, non-joinder of necessary party and delay and laches. On merits, the engagement of the petitioner has not been disputed. But, it is alleged that the work was made available to the petitioner as per requirement of the work and availability of the funds. It is alleged that at the time of engagement of the petitioner, he was made aware about this fact. It is alleged that the petitioner was an intermittent worker and he used to report for duty as per his own requirement of the work. It is alleged that the other workers as per mandays chart annexure R-3 were regularized as per their seniority and continuous working for more than 240 days in the respective years. It is alleged that the case of the Mool Raj Upadhaya is not applicable to the facts of this case. It is alleged that the petitioner has been regularized as per the subsequent policy applicable in his case. The respondent has thus, prayed for rejecting the claim.

4. No rejoinder has been filed by the petitioner.

5. On 12.05.2014, following issues were framed:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent from the year 1999 to 2007 is/was illegal and unjustified as alleged? ..OPP.
2. Whether the claim petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.

5. Relief.
6. I have heard the Id. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief. : Reference answered accordingly.

Reasons for findings

Issue No. 18.

It is alleged by the petitioner that during the period from 1999 to 2007, he was given fictional breaks and he was thus, not allowed to complete 240 days in a 12 calendar months, whereas his juniors were allowed more than 240 days work in a 12 calendar months and they are now been regularized. The petitioner was appointed in the year 1999 as per his pleadings. Though, the respondent has alleged that the petitioner did not work for 240 days and he remained absent on many occasions. It is also averred on behalf of the respondent that after the year 2007, more than 240 days work has been provided to the petitioner also.

9. To prove the respective case, the petitioner has himself appeared as PW1 and filed his affidavit of examination-in-chief Ex. PW1/A, in which he has specifically claimed that the breaks given to him from the year 1999 to 2007 were illegal and arbitrary, as no such breaks had been given to the other similarly situated workers. In his cross-examination, he has admitted that he has been provided more than 240 days of work after September, 2007. This means the dispute is only for the years 1999 to 2007, as stated in the affidavit.

10. The respondent had examined Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar, who has claimed that the petitioner used to remain absent from duty, though the muster roll used to be issued in his favour. He has filed the mandays chart Ex. RW1/C, which shows that right from the year 1999 to 2007, less than 240 days of work was given to him. Though, after 2007, muster roll for more than 240 days was issued. He has stated that the HPPWD Division Joginder Nagar was opened in the year 2004 and from the year 2003 to 2004, the petitioner has worked in National Highway Division and in this regard he has filed notifications Ex. RW1/A and Ex. RW1/B. He has also stated that the mandays chart of daily waged workers, who have now been regularized is Ex. RW1/D. But he has claimed that these workers working in different Sub Divisions, which were more than eight kilometers beyond Joginder Nagar. He has stated that since the petitioner did not fulfill the criteria, therefore, he was not regularized. In his cross-examination, he has admitted that the daily waged workers are not issued the appointment letter nor any terms and conditions are settled. He has denied that the breaks were intentionally given to the petitioner till 2007. He has admitted that the workmen mentioned in Ex. RW1/D have since been regularized. He has admitted that the State Government had also issued the letter Ex. PX for not giving the breaks to the workmen.

11. On the basis of the above evidence, it has been submitted on behalf of the petitioner that the petitioner was given intentional breaks from 1999 to 2007 and he could not complete 240 days of work in 12 calendar months. But the similarly situated workmen mentioned in Ex. RW1/D had completed their 240 days and were regularized. But the Id. Dy. D.A. for the respondent has submitted that since the petitioner did not work for more than 240 days, therefore, he could not be considered under the scheme.

12. The perusal of the document Ex. RW1/D shows that the workmen who had been employed in the year 1999 onwards are at serial No.4, 6 to 11. The petitioner has also claimed himself to be employed in 1998 as per Ex. RW1/C. He had thus, rightly claimed that the breaks given to him from 1998 to 2007 were illegal. The perusal of the above referred documents show that no other worker except Smt. Gudi Devi, was given less work in the year 2003 and other workers were given more than 240 days in 12 calendar months and they have been regularized. There is no reason why the petitioner was given less than 240 days of work and his case was to be considered along-with similarly situated workmen. The plea of the respondent cannot be accepted that the petitioner absented from the work. There is nothing in the record to show that the respondent had issued any notice to the petitioner, asking him to join the duties, if he himself absented despite the muster roll having been issued to him for 15, 20 or 30 days, as shown in Ex. RW1/C. Rather, this document shows that right from the year 1998 to the year 2007, less than 240 days work was given to the petitioner in a year. But, after the year 2007, more than 240 days work has been given to the petitioner. But, it is not shown why the other workmen as mentioned in Ex. RW1/D, were issued muster roll for more days, i.e. more than 240 days in a year. There is also nothing in this document to show that the workmen mentioned in Ex. RW1/D were serving in some other Division, so that they can be given more work than the petitioner. No record has been filed by the respondent to show that the workmen employed along-with the petitioner were also given less than 240 days of work in 12 calendar months. This means that the petitioner had not been provided work for more than 240 days in 12 calendar months, whereas the similarly situated workmen had been provided more work and their services have since been regularized. But, the petitioner seems to have been discriminated with, for no reasons whatsoever. Therefore, the action on the part of the respondent amounts to unfair labour practice.

13. In view of the above discussions, it appears that the respondent could not have discriminated the similarly situated workmen. Therefore, the petitioner is also entitled to be considered for regularization along-with the other similarly situated workmen, as the petitioner was intentionally given the breaks, which cannot be justified by the respondent. Therefore, the petitioner shall also be deemed to be in continuous service by the respondent like the similarly situated workmen and his case shall also be considered by the respondent for regularization as per the government policy. In view of the above discussions, my findings on the issue No.1 is in the affirmative, in favour of the petitioner and against the respondent.

Issue No. 2

14. It appears that the petition is maintainable and no infirmity in the form of the petition has been pointed out. In fact, the reference has been received from the appropriate Govt. and the petitioner has filed the statement of claim, which is maintainable. This issue is therefore, decided in favour of the petitioner and against the respondent.

Issue No. 3

15. It is alleged that the petition is bad for non-joinder of the necessary parties i.e. The Executive Engineer, B&R Division HPPWD, Joginder Nagar. However, it appears to this court that the appropriate Government has made Reference against the Executive Engineer, B&R Division

HPPWD, Joginder Nagar. It is well settled that in the Reference, the court cannot add any new party nor the petitioner can add any new party. Therefore, there is no question of the non-joinder of the necessary parties. Therefore, this issue is decided against the respondent and in favour of the petitioner.

Issue No. 4

16. There is no delay in filing the claim, though, only suggestion was given to the petitioner that he had filed the claim late, but no evidence has been led by the respondent in this regard. The petitioner has been still serving the respondent and after 2007, he was given more than 240 days of work in 12 calendar months. But similarly situated workmen had been shown to be regularized, but he was not regularized. Since, the petitioner is still working with the respondent, the question of delay becomes academic only, having no effect on the merits of the case. Hence, my finding on the above issue is in the negative, against the respondent and in favour of the petitioner.

Relief:

17. In view of the above discussion, it has to be held that the fictional breaks given to the petitioner did not seem to be justified. Therefore, the claim is allowed and reference answered accordingly in favour of the petitioner. The petitioner shall be deemed to be in the continuous service of the respondent with all consequential benefits, except back wages. He shall be considered for regularization by the respondent, at the time when his juniors were regularized, as per the policy governing the daily wages, as framed by the State Government and operative from time to time. In the peculiar facts of the case, the parties shall bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of September, 2014.

By order,
(J.K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref No. : 185/2013

Date of Institution : 15.11.2013

Date of Decision : 09.09.2014

Shri Hoshiyar Singh s/o Shri Moji Ram, r/o Village Patt, P.O. Dull, Tehsil Joginder Nagar,
District Mandi, H.P. .
..Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.

*..Respondent.***Reference under Section 10 (1) of the Industrial Disputes Act, 1947.**

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Hoshiyar Singh, S/O Shri Moji Ram, R/O Village Patt, P.O. Dull, Tehsil Joginder Nagar, District Mandi, H.P. during February, 1999 to 2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After notice, the parties appeared. The petitioner has filed the statement of claim by averring that he was engaged by the respondent w.e.f. 25.12.1998, on muster roll as daily waged basis where he worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar, though, no appointment letter was given. It is alleged that the services of the petitioner were engaged by the respondent for 15, 18 or 20 days in every months instead of full month and he was thus, given fictional breaks, which continued up-to 30.9.2007. But, thereafter, the services of the petitioner were engaged for continuously without break, as per the instructions of the Principal Secretary (PW) to the Government of Himachal Pradesh, vide his letter No.PBW-AH(1)-6/2003, dated 14.9.2007. It is alleged that the persons working with the petitioner and even the juniors of the petitioner, were engaged continuously without any breaks. It is alleged that at the time of giving fictional breaks, the principle of ‘last come first go’ was not followed and as such the persons namely Rajinder Singh, Subhash Chand, Sumer Singh, Sanjeev Kumar, Gudi Devi, Prithi Pal, Rajinder Pal, Dalip Singh, Gautam Ram, Bhawani Ram and Ram Dhan have been engaged by the respondent without any breaks in violation of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for short). Therefore, the period of break should be counted as continuous service under Section 25-B of the Act. It is alleged that this Court has already decided the reference No.23/2010 titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath. Therefore, he is also entitled for regularization in view of the case of Mool Raj Upadhaya and the matter for seniority, wages etc.

3. The respondent in its reply has taken the preliminary objections regarding maintainability, non-joinder of necessary party and delay and laches. On merits, the engagement of the petitioner has not been disputed. But, it is alleged that the work was made available to the petitioner as per requirement of the work and availability of the funds. It is alleged that at the time of engagement of the petitioner, he was made aware about this fact. It is alleged that the petitioner was an intermittent worker and he used to report for duty as per his own requirement of the work. It is alleged that the other workers as per mandays chart annexure R-3 were regularized as per their seniority and continuous working for more than 240 days in the respective years. It is alleged that

the case of the Mool Raj Upadhaya is not applicable to the facts of this case. It is alleged that the petitioner has been regularized as per the subsequent policy applicable in his case. The respondent has thus, prayed for rejecting the claim.

4. No rejoinder has been filed by the petitioner.
5. On 12.05.2014, following issues were framed:
 1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent from February, 1999 to the year 2007 is/was illegal and unjustified as alleged? ..*OPP*.
 2. Whether the claim petition is not maintainable in the present form? ..*OPR*.
 3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR*.
 4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR*.
 5. Relief.
 6. I have heard the Id. counsel/AR for the parties and have gone through the case file.
 7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Relief. : Reference answered accordingly.

Reasons for findings

Issue No. 1

8. It is alleged by the petitioner that during the period from 1998 to 2007, he was given fictional breaks and he was thus, not allowed to complete 240 days in 12 calendar months, whereas his juniors were allowed more than 240 days work in 12 calendar months and they have now been regularized. The petitioner was appointed in the year 1998 as per his pleadings. Though, the respondent has alleged that the petitioner did not work for 240 days and he remained absent on many occasions. It is also averred on behalf of the respondent that after the year 2007, more than 240 days work has been provided to the petitioner also.

9. To prove the respective case, the petitioner has himself appeared as PW1 and filed his affidavit of examination-in-chief Ex. PW1/A, in which he has specifically claimed that the breaks given to him from the year 1998 to 2007 were illegal and arbitrary, as no such breaks had been given to the other similarly situated workers. In his cross-examination, he has admitted that he has

been provided more than 240 days of work after September, 2007. This means the dispute is only for the years 1999 to 2007, as stated in the reference.

10. The respondent had examined Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar, who has claimed that the petitioner used to remain absent from duty, though the muster roll used to be issued in his favour. He has filed the mandays chart Ex.RW1/C, which shows that right from the year 1999 to 2007, less than 240 days of work was given to him. Though, after 2007, muster roll for more than 240 days was issued. He has stated that the HPPWD Division Joginder Nagar was opened in the year 2004 and from the year 2003 to 2004, the petitioner has worked in National Highway Division and in this regard he has filed notifications Ex. RW1/A and Ex. RW1/B. He has also stated that the mandays chart of daily waged workers, who have now been regularized is Ex. RW1/D. But he has claimed that these workers working in different Sub Divisions, which were more than eight kilometers beyond Joginder Nagar. He has stated that since the petitioner did not fulfill the criteria, therefore, he was not regularized. In his cross-examination, he has admitted that the daily waged workers are not issued the appointment letter nor any terms and conditions are settled. He has denied that the breaks were intentionally given to the petitioner till 2007. He has admitted that the workmen mentioned in Ex. RW1/D have since been regularized. He has admitted that the State Government had also issued the letter Ex. PX for not giving the breaks to the workmen.

11. On the basis of the above evidence, it has been submitted on behalf of the petitioner that the petitioner was given intentional breaks from the date of his appointment till 2007 and he could not complete 240 days of work in 12 calendar months. But the similarly situated workmen mentioned in Ex. RW1/D, had completed their 240 days and were regularized. But the Id. Dy. D.A. for the respondent has submitted that since the petitioner did not work for more than 240 days, therefore, he could not be considered under the scheme.

12. The perusal of the document Ex. RW1/D shows that the workmen who had been employed alongwith the petitioner or after him have been regularized. But, he had claimed that the breaks given to him from till 2007, which were illegal. It is not shown why the other workmen, as mentioned in Ex. RW1/D, were issued muster roll for more days. It appears that the petitioner could have also been provided more than 240 days of work in a year and his case was to be considered along-with similarly situated workmen. The plea of the respondent cannot be accepted that the petitioner absented from the work. There is nothing in the record to show that the respondent had issued any notice to the petitioner, asking him to join the duties, if he himself absented despite the muster roll having been issued to him for 15, 20 or 30 days, as shown in Ex. RW1/C. Rather, this document shows that right from the year 2004 to the year 2006, the muster roll for 15 days in a month was issued. But, after September, 2007, the muster roll for 30 days was being issued. There is also nothing in this document to show that the workmen mentioned in Ex. RW1/D were serving in some other Division, so that they can be given more work than the petitioner. No record has been filed by the respondent to show that the workmen employed alongwith the petitioner were also given less than 240 days of work in 12 calendar months. This means that the petitioner had not been provided work for more than 240 days in 12 calendar months, whereas the similarly situated workmen had been provided more work and their services have since been regularized. But, the petitioner seems to have been discriminated with, for no reasons whatsoever. Therefore, the action on the part of the respondent amounts to unfair labour practice.

13. In view of the above discussions, it appears that the respondent could not have discriminated the similarly situated workmen. Therefore, the petitioner is also entitled to be considered for regularization along-with the other similarly situated workmen, as the petitioner was intentionally given the breaks, which cannot be justified by the respondent. Therefore, the

petitioner shall also be deemed to be in continuous service by the respondent like the similarly situated workmen and his case shall also be considered by the respondent for regularization as per the government policy. In view of the above discussions, my findings on the issue No.1 is in the affirmative, in favour of the petitioner and against the respondent.

Issue No. 2

14. It appears that the petition is maintainable and no infirmity in the form of the petition has been pointed out. In fact, the reference has been received from the appropriate Govt. and the petitioner has filed the statement of claim, which is maintainable. This issue is therefore, decided in favour of the petitioner and against the respondent.

Issue No. 3

15. It is alleged that the petition is bad for non-joinder of the necessary parties i.e. The Executive Engineer, B&R Division HPPWD, Joginder Nagar. However, it appears to this court that the appropriate Government has made Reference against the Executive Engineer, B&R Division HPPWD, Joginder Nagar. It is well settled that in the Reference, the court cannot add any new party nor the petitioner can add any new party. Therefore, there is no question of the non-joinder of the necessary parties. Therefore, this issue is decided against the respondent and in favour of the petitioner.

Issue No. 4

16. There is no delay in filing the claim, though, only suggestion was given to the petitioner that he had filed the claim late, but no evidence has been led by the respondent in this regard. The petitioner has been still serving the respondent and after 2007, he was given more than 240 days of work in 12 calendar months. But similarly situated workmen had been shown to be regularized, but he was not regularized. Therefore, he had taken up the matter with the labour department. Had the other workmen been regularized much prior to the petitioner taking up the matter with the labour department, there would have been delay and laches. Since, the petitioner is still working with the respondent, the question of delay becomes academic only. Hence, my finding on the above issue is in the negative, against the respondent and in favour of the petitioner.

Relief:

17. In view of the above discussion, it has to be held that the fictional breaks given to the petitioner did not seem to be justified. Therefore, the claim is allowed and reference answered accordingly in favour of the petitioner. The petitioner shall be deemed to be in the continuous service of the respondent with all consequential benefits, except back wages. He shall be considered for regularization by the respondent, at the time when his juniors have been regularised, as per the policy governing the daily wagers, as framed by the State Government and operative from time to time. In the peculiar facts of the case, the parties shall bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of September, 2014.

By order,
(J.K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref No. : 197/2013

Date of Institution : 15.11.2013

Date of Decision : 09.09.2014

Shri Pyar Chand s/o Shri Prem Singh, r/o Village Banar, P.O. Dul, Tehsil Joginder Nagar,
District Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.
...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Pyar Chand, S/O Shri Prem Singh, R/O Village Banar, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during November, 1998 to 2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After notice, the parties appeared. The petitioner has filed the statement of claim by averring that he was engaged by the respondent w.e.f. November, 1998, on muster roll as daily waged basis where he worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar, though, no appointment letter was given. It is alleged that the services of the petitioner were engaged by the respondent for 15, 18 or 20 days in every months instead of full month and he was thus, given fictional breaks, which continued up-to 30.9.2007. But, thereafter, the services of the petitioner were engaged for continuously without break, as per the instructions of the Principal Secretary (PW) to the Government of Himachal Pradesh, vide his letter No.PBW-AH(1)-6/2003, dated 14.9.2007. It is alleged that the persons working with the petitioner and even the juniors of the petitioner, were engaged continuously without any breaks. It is alleged that at the time of giving fictional breaks, the principle of ‘last come first go’ was not followed and as such the persons namely Rajinder Singh, Subhash Chand, Sumer Singh, Sanjeev Kumar, Gudi Devi, Prithi Pal, Rajinder Pal, Dalip Singh, Gautam Ram, Bhawani Ram and Ram Dhan have been engaged by the respondent without any breaks in violation of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for short). Therefore, the period of break should be counted as continuous service under Section 25-B of the Act. It is alleged that this Court has already decided the reference No.23/2010 titled as Suresh Kumar vs. The Executive

Engineer, HPPWD, Division Baijnath. Therefore, he is also entitled for regularization in view of the case of Mool Raj Upadhaya and the matter for seniority, wages etc.

3. The respondent in its reply has taken the preliminary objections regarding maintainability, non-joinder of necessary party and delay and laches. On merits, the engagement of the petitioner has not been disputed. But, it is alleged that the work was made available to the petitioner as per requirement of the work and availability of the funds. It is alleged that at the time of engagement of the petitioner, he was made aware about this fact. It is alleged that the petitioner was an intermittent worker and he used to report for duty as per his own requirement of the work. It is alleged that the other workers as per mandays chart annexure R-3 were regularized as per their seniority and continuous working for more than 240 days in the respective years. It is alleged that the case of the Mool Raj Upadhaya is not applicable to the facts of this case. It is alleged that the petitioner has been regularized as per the subsequent policy applicable in his case. The respondent has thus, prayed for rejecting the claim.

4. No rejoinder has been filed by the petitioner.

5. On 12.05.2014, following issues were framed:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent from November, 1998 to the year 2007 is/was illegal and unjustified as alleged? ..OPP.
2. Whether the claim petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Relief. : Reference answered accordingly.

REASONS FOR FINDINGS

Issue No .1

8. It is alleged by the petitioner that during the period from 1998 to 2007, he was given fictional breaks and he was thus, not allowed to complete 240 days in a 12 calendar months,

whereas his juniors were allowed more than 240 days work in a 12 calendar months and they are now been regularized. The petitioner was appointed in the year 1998 as per his pleadings. Though, the respondent has alleged that the petitioner did not work for 240 days and he remained absent on many occasions. It is also averred on behalf of the respondent that after the year 2007, more than 240 days work has been provided to the petitioner also.

9. To prove the respective case, the petitioner has himself appeared as PW1 and filed his affidavit of examination-in-chief Ex. PW1/A, in which he has specifically claimed that the breaks given to him from the year 1998 to 2007 were illegal and arbitrary, as no such breaks had been given to the other similarly situated workers. In his cross-examination, he has admitted that he has been provided more than 240 days of work after September, 2007. This means the dispute is only for the years 2004 to 2007, as stated in the affidavit.

10. The respondent had examined Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar, who has claimed that the petitioner used to remain absent from duty, though the muster roll used to be issued in his favour. He has filed the mandays chart Ex. RW1/C, which shows that right from the year 1998 to 2006, less than 240 days of work was given to him. Though, after 2007, muster roll for more than 240 days was issued. He has stated that the HPPWD Division Joginder Nagar was opened in the year 2004 and from the year 2003 to 2004, the petitioner has worked in National Highway Division and in this regard he has filed notifications Ex. RW1/A and Ex. RW1/B. He has also stated that the mandays chart of daily waged workers, who have now been regularized is Ex. RW1/D. But he has claimed that these workers working in different Sub Divisions, which were more than eight kilometers beyond Joginder Nagar. He has stated that since the petitioner did not fulfill the criteria, therefore, he was not regularized. In his cross-examination, he has admitted that the daily waged workers are not issued the appointment letter nor any terms and conditions are settled. He has denied that the breaks were intentionally given to the petitioner till 2007. He has admitted that the workmen mentioned in Ex. RW1/D have since been regularized. He has admitted that the State Government had also issued the letter Ex. PX for not giving the breaks to the workmen.

11. On the basis of the above evidence, it has been submitted on behalf of the petitioner that the petitioner was given intentional breaks from 1998 to 2006 and he could not complete 240 days of work in 12 calendar months. But the similarly situated workmen mentioned in Ex. RW1/D had completed their 240 days and were regularized. But the Id. Dy. D.A. for the respondent has submitted that since the petitioner did not work for more than 240 days, therefore, he could not be considered under the scheme.

12. The perusal of the document Ex. RW1/D shows that the workmen who had been employed in the year 1998 onwards are at serial No.4, 6 to 11. The petitioner has claimed himself to be employed in 1998 and that the breaks given to him from 1998 to 2007 were illegal. The perusal of the above document shows that the other workers at serial No.4, 6 to 11 were given more than 240 days of work and regularized as per the government policy. But the petitioner who was senior was given less than 240 days work in 12 calendar months and thus, not regularized. the petitioner, being senior, could have also been provided more than 240 days of work and her case was to be considered along-with similarly situated workmen. The plea of the respondent cannot be accepted that the petitioner absented from the work. There is nothing in the record to show that the respondent had issued any notice to the petitioner, asking her to join the duties, if she herself absented despite the muster roll having been issued to her for 15, 20 or 30 days, as shown in Ex. RW1/C. Rather, this document shows that right from the year 2001 to the year 2006, the muster roll for 15, 19 or on one occasion for 28 days in a month was issued. But, after September, 2007, the muster roll for 30/31 days was being issued. But, it is not shown why the other workmen as mentioned in Ex. RW1/D, were issued muster roll for more days. There is also nothing in this

document to show that the workmen mentioned in Ex. RW1/D were serving in some other Division, so that they can be given more work than the petitioner. No record has been filed by the respondent to show that the workmen employed alongwith the petitioner were also given less than 240 days of work in 12 calendar months. This means that the petitioner had not been provided work for more than 240 days in 12 calendar months, whereas the similarly situated workmen had been provided more work and their services have since been regularized. Thus, the petitioner seems to have been discriminated with, for no reasons whatsoever. Therefore, the action on the part of the respondent amounts to unfair labour practice.

13. In view of the above discussions, it appears that the respondent could not have discriminated the similarly situated workmen. Therefore, the petitioner is also entitled to be considered for regularization along-with the other similarly situated workmen, as the petitioner was intentionally given the breaks, which cannot be justified by the respondent. Therefore, the petitioner shall also be deemed to be in continuous service by the respondent like the similarly situated workmen and his case shall also be considered by the respondent for regularization as per the government policy. In view of the above discussions, my findings on the issue No.1 is in the affirmative, in favour of the petitioner and against the respondent.

Issue No. 2

14. It appears that the petition is maintainable and no infirmity in the form of the petition has been pointed out. In fact, the reference has been received from the appropriate Govt. and the petitioner has filed the statement of claim, which is maintainable. This issue is therefore, decided in favour of the petitioner and against the respondent.

Issue No. 3

15. It is alleged that the petition is bad for non-joinder of the necessary parties i.e. The Executive Engineer, B&R Division HPPWD, Joginder Nagar. However, it appears to this court that the appropriate Government has made Reference against the Executive Engineer, B&R Division HPPWD, Joginder Nagar. It is well settled that in the Reference, the court cannot add any new party nor the petitioner can add any new party. Therefore, there is no question of the non-joinder of the necessary parties. Therefore, this issue is decided against the respondent and in favour of the petitioner.

Issue No. 4

16. There is no delay in filing the claim, though, only suggestion was given to the petitioner that he had filed the claim late, but no evidence has been led by the respondent in this regard. The petitioner has been still serving the respondent and after 2007, he was given more than 240 days of work in 12 calendar months. But similarly situated workmen had been shown to be regularized, but he was not regularized. Since, the petitioner is still working with the respondent, the question of delay becomes academic only, having no effect on the merits of the case. Hence, my finding on the above issue is in the negative, against the respondent and in favour of the petitioner.

Relief:

17. In view of the above discussion, it has to be held that the fictional breaks given to the petitioner did not seem to be justified. Therefore, the claim is allowed and reference answered accordingly in favour of the petitioner. The petitioner shall be deemed to be in the continuous service of the respondent with all consequential benefits, except back wages. He shall be considered for regularization by the respondent, at the time when his juniors are to be regularized

or have already been regularised, as per the policy governing the daily wagers, as framed by the State Government and operative from time to time. In the peculiar facts of the case, the parties shall bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of September, 2014.

(J.K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P. CAMP AT KAZA, LAHAUL & SPITI.

Ref No. : 129/2013
Date of Institution : 29.8.2013
Date of Decision : 22.09.2014

Smt. Padma Youdan w/o Shri Tanzin Dorje, r/o V.P.O. Kaza, District Lahaul & Spiti, H.P.
..Petitioner.

Versus

The Executive Engineer, I&PH Division Kaza, District Lahaul Spiti, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services Smt. Padma Youdan, W/O Shri Tanzin Dorje, R/O V.P.O. Kaza, District Lahaul Spiti, H.P. during 2000 to 2010 and finally during 2011 by the Executive Engineer, I&PH Division Kaza, District Lahaul & Spiti, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After notice, the parties appeared. The petitioner has filed the statement of claim by alleging that she has been engaged on muster roll as daily wages, without issuing any appointment letter in the month of May, 1998. She worked under the Assistant Engineer, I&PH, Sub Division Kaza upto 31.10.2009, who gave her fictional breaks so that she may not complete 160 days in a calendar year. Thereafter, her services were terminated on 01.11.2009 by verbal orders of the respondent. It is alleged that the demand notice was raised before the Labour Officer, Recong Peo, which could not be reconciled. Thereafter, the matter was sent to the appropriate Govt., which made the reference and the same was sent to this Court. But, since the dispute was not properly referred by the Govt. , the said reference was withdrawn. The petitioner thereafter, again raised fresh demand notice and the present reference was accordingly made. It is alleged that the respondent had terminated her services again in 2010, whereas she was given fictional breaks and was not allowed to complete 160 days in a calendar year and violated the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). But the department/respondent had not followed the principle of 'last come first go' inasmuch as the juniors of the petitioner namely Tashi Tandup, Thuktan Zangpo and Dorje Zangpo were retained continuously without any breaks in violation of Sections 25-G and 25-H of the Act. It is alleged that now the respondent has disengaged her service from 1.11.2013 on account of fictional breaks. It is alleged that the petitioner had worked continuously since May, 1998 and has completed 10 years in the year 2007. Therefore, following the Mool Raj Upadhaya's case, the petitioner has to be regularized as work charge beldar from 1.1.2008 when her juniors were regularized. It is alleged that the breaks given to the petitioner by the respondent amounts unfair labour practice under Section 2(ra) of the Act. Hence, the petitioner has prayed for setting aside the illegal breaks given to her and allowing her all consequential service benefits, as allowed to her juniors.

3. The respondent has also filed the reply wherein it has taken preliminary objections regarding delay and cause of action. It is alleged that the petitioner is still in service and her services have not been disengaged. On merits, it is admitted that the petitioner was engaged in May, 1998 on daily wage basis. It is also alleged that the petitioner has been engaged in tribal area of Spiti Sub Division which remained snow bound for six months and the working season is from April to November, during which period the work is provided to the daily wagers. Therefore, the respondent is not in a position to provide any work to the petitioner throughout the year. It is alleged that the petitioner is in the habit of reporting for the duty at her sweet will, as per annexure R-1 mandays chart, whereby she could not complete 160 days. It is denied that the fictional breaks have been given to the petitioner or that her juniors have been regularized. The respondent has denied the case of the petitioner and prayed for rejecting the claim of the petitioner.

4. No rejoinder has been filed by the petitioner.

5. On 06.03.2014, following issues were framed:

1. Whether time to time termination of the services of the petitioner/giving breaks in service to the petitioner by the respondent during the year 2000 to 2010 is/was illegal and unjustified as alleged? ..OPP.
2. Whether the final termination of services of the petitioner by the respondent in the year 2011 is/was illegal and unjustified as alleged? ..OPP.
3. Whether the petitioner has a cause of action? ..OPR.
4. Whether the claim petition is not maintainable in the present form? ..OPR.
5. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.

6. Whether the claim petition is premature and has become infructuous as alleged. It so, its effect? ..OPR.
7. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..OPR.
8. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : Yes
 Issue No.2 : No
 Issue No.3 : Yes
 Issue No.4 : No
 Issue No.5 : No
 Issue No.6 : No
 Issue No.7 : No
 Relief. : Reference answered accordingly.

Reasons For Findings

Issue No. 1

8. To prove the respective cases, the petitioner has herself appeared as PW1 and filed her affidavit of examination-in-chief Ex. PW1/A, in which she has pleaded the facts as averred in the statement of claim, by asserting her case. She has also filed letter Ex. PW1/B, whereby the government has decided that the daily wagers should be given work for full month as their fictional breaks are not considered by the Courts and they are deemed in continuous employment on daily wage basis. In her cross-examination she has denied that she used to remain absent occasionally, therefore, she could not complete 160 days in a year. She has denied that her attendance has been correctly marked in the muster roll. But, volunteered that at the spot, attendance is not recorded. She had admitted that she had also worked with the department in the year 2013. She has admitted that the Spiti Sub Division remains snow bound for more than six months, from April to November. She has denied that no fictional breaks were given to her. She had also filed the claim earlier, but later on withdrawn the same.

9. In rebuttal, the respondent had examined Sh Sanjeev Kumar Sharma, Executive Engineer I&PH Division, Kaza, who has filed his affidavit of examination-in-chief Ex. RW1/A, in which he has also pleaded the facts as asserted in the reply. He has also filed the record i.e. the mandays chart of the petitioner Ex. RW1/B, another mandays chart relating to the petitioner Ex. RW1/C, mandays chart of Tashi Tandup Ex. RW1/D, Mandays chart of Thuktan Zango Ex. RW1/E and mandays chart of Dorje Zango Ex. RW1/F. This witness in cross-examination has admitted that no appointment letter was issued to the petitioner though volunteered that the daily wagers are not issued any such letters as per the practice in the department, though, there is no such instruction in this regard. He has admitted that the petitioner had not been given work from November to May. He has admitted that in the letter Ex. PW1/B, relied on by the petitioner, the daily wagers have to be engaged for full month. He has however admitted that the mandays chart Ex. PX was issued by his department regarding daily wage workers, who have been provided the work of more than 300 days. He has admitted that there is no separate notification regarding Kaza that the work will not be provided from November to May. He has also admitted the letter Ex. PY, whereby the casual

register and casual card have to be maintained regarding daily wagers. He has filed the seniority list of work charge Class IV beldars Ex. RW1/G. He has admitted that the work charge employees at serial No.57 to 60 were employed after the year 1998 and they had been made regular. He has stated that they have not issued any notice to the petitioner whenever she did not turn up for work. This is what, the parties have led in evidence.

10. I have heard the Id. Advocate/AR for the petitioner and Id. Dy. D.A. for the respondent.

11. It is the admitted case of the parties that the petitioner was a daily wager. It is claimed by the respondent that since Spiti Sub Division is snow bound for six months, therefore, work is not provided after November till April. However, no such Govt. order has been produced to show that the daily wagers cannot be kept after November till April. Further, the respondent could not clarify the position with regard to the mandays chart Ex. PX, whereby some other daily wage workers, in which the work even to the extent of 366 days was provided to the daily wagers. The three daily wagers shown in Ex. PX have been provided the work for more than 300 days in some years and they have been regularized. If the daily wage workers could not be provided the work after November till April of the year, then the department had to explain as to under what circumstances, certain daily wage workers shown in Ex. PX, were provided the work for 365 and 366 days. This is a case of sheer discrimination, whereby one set of workmen have been provided the work throughout the year and some workmen had not been provided even 160 days of work in 12 calendar months. Because, in the tribal area, for counting the continuous service, the workman has to work for 160 days in 12 calendar months. Similarly, the mandays chart of the work charge labour Ex. RW1/G shows that they have been employed after the petitioner was engaged by the respondent.

12. The Id. Dy. D.A. for the respondent has argued that the petitioner did not turn up for work so she could not complete 160 days in a 12 calendar months. However, the respondent in his evidence has admitted that no notice was given to the petitioner in case she did not turn up for work. It also appears to this Court that in case the employee is absent from duty, then the employer has to issue notice and disciplinary proceedings can be initiated for the absence. In case of the daily wage workers, the employer can issue notice asking them to join the duty, or else they can employ another daily wagers in his place. But, it has not been done in this case. Therefore, it cannot be said that the petitioner herself remained absent from duty, so that she could not complete 160 days of continuous service as per provisions of Section 25-B of the Act.

13. In view of the above discussions, there has been discrimination amongst the workers meted out of the respondent, whereas certain workmen have been engaged for whole of the year, without explaining why they were employed throughout the year and why the petitioner and similarly situated workmen were not provided the work throughout the year or at least for 160 days. Such a unfair labour practice cannot be approved of by the courts. Therefore, the fictional breaks given to the petitioner, as shown in the mandays chart, appears to illegal and the petitioner shall be deemed to be in continuous service as daily wage worker of the respondent. Since, certain junior workmen had been made regular, therefore, the petitioner is also entitled for regularization as per the government policy applicable to the daily wage workmen by the department. However, as the workman is still working with the department, there is no question of payment of back wages etc. Hence, the issue No.1 is decided in favour of the petitioner and against the respondent.

Issue No. 2

14. It appears that the respondent had been giving fictional breaks to the petitioner therefore, it does not amount to final termination of the services of the petitioner, as the petitioner is still said to be working with the respondent. Therefore, this issue becomes infructuous. Therefore, this issue is decided accordingly.

Issue No. 3

15. In view of the findings on the above issue No.1, it appears that the petitioner has a cause of action. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4

16. It is not shown by the respondent as to why the petition is not maintainable in this form. No infirmity in the form of the petition has been pointed out. In fact, the reference has been received from the appropriate Govt. and the petitioner has only to file the statement of claim under the Act. This Court does not find any infirmity in the form of the claim. Therefore, this issue is decided against the respondent and in favour of the petitioner.

Issue No. 5

17. There is no delay in filing the claim, though, only suggestion was given to the petitioner that she had filed the claim late, but no evidence has been led by the respondent in this regard. The petitioner has been still serving the respondent. In fact she was given less than 160 days of work in 12 calendar months, but similarly situated workmen had been shown to be regularized. Since, the petitioner is still working with the respondent, the question of delay becomes academic only, having no effect on the merits of the case. Hence, my finding on the above issue is in the negative, against the respondent and in favour of the petitioner.

Issue No. 6

18. It is not shown by the respondent as to how the petition is premature. Because, the fictional breaks have admittedly been given to the petitioner. In view of the findings on issue No.1, it is to be held that the petition is not premature. Therefore, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 7

19. It is not shown as to how the petitioner has not come to the Court with clean hands. No evidence has been led on this issue. Therefore, this issue is decided accordingly.

Relief:

20. In view of the above discussion, it has to be held that the fictional breaks given to the petitioner did not seem to be justified. Therefore, the claim is allowed and reference answered accordingly in favour of the petitioner. The petitioner shall be deemed to be in the continuous service of the respondent with all consequential benefits, except back wages. She shall be considered for regularization by the respondent, at the time when her juniors are said to be regularized, as per the policy governing the daily wages, as framed by the State Government and operative from time to time. In the peculiar facts of the case, the parties shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of September, 2014.

(J.K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
Camp at Kaza.

IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P. CAMP AT KAZA, LAHAUL & SPITI.

Ref No. : 130/2013
 Date of Institution : 29.8.2013
 Date of Decision : 22.09.2014

Smt. Padma Dolkar w/o Shri Nawang Lotey, r/o VPO Kaza, District Lahaul & Spiti, H.P.
..Petitioner.

Versus

The Executive Engineer, I&PH Division Kaza, District Lahaul Spiti, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Padma Dolkar, W/O Shri Nawang Lotey, R/O V.P.O. Kaza, District Lahaul Spiti, H.P. during 2002 to 2010 and finally during 2011 by the Executive Engineer, I&PH Division Kaza, District Lahaul & Spiti, H.P. without complying with the provision of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After notice, the parties appeared. The petitioner has filed the statement of claim by alleging that she has been engaged on muster roll as daily wages, without issuing any appointment letter in the month of May, 1998. She worked under the Assistant Engineer, I&PH, Sub Division Kaza upto 31.10.2009, who gave her fictional breaks so that she may not complete 160 days in a calendar year. Thereafter, her services were terminated on 01.11.2009 by verbal orders of the respondent. It is alleged that the demand notice was raised before the Labour Officer, Recong Peo, which could not be reconciled. Thereafter, the matter was sent to the appropriate Govt., which made the reference and the same was sent to this Court. But, since the dispute was not properly referred by the Govt., the said reference was withdrawn. The petitioner thereafter, again raised

fresh demand notice and the present reference was accordingly made. It is alleged that the respondent had terminated her services again in 2010, whereas she was given fictional breaks and was not allowed to complete 160 days in a calendar year and violated the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). But the department/respondent had not followed the principle of 'last come first go' inasmuch as the juniors of the petitioner namely Tashi Tandup, Thuktan Zangpo and Dorje Zangpo were retained continuously without any breaks in violation of Sections 25-G and 25-H of the Act. It is alleged that now the respondent has disengaged her service from 1.11.2013 on account of fictional breaks. It is alleged that the petitioner had worked continuously since May, 1998 and has completed 10 years in the year 2007. Therefore, following the Mool Raj Upadhaya's case, the petitioner has to be regularized as work charge beldar from 1.1.2008 when her juniors were regularized. It is alleged that the breaks given to the petitioner by the respondent amounts unfair labour practice under Section 2(ra) of the Act. Hence, the petitioner has prayed for setting aside the illegal breaks given to her and allowing her all consequential service benefits, as allowed to her juniors.

3. The respondent has also filed the reply wherein it has taken preliminary objections regarding delay and cause of action. It is alleged that the petitioner is still in service and her services have not been disengaged. On merits, it is admitted that the petitioner was engaged in May, 1998 on daily wage basis. It is also alleged that the petitioner has been engaged in tribal area of Spiti Sub Division which remained snow bound for six months and the working season is from April to November, during which period the work is provided to the daily wagers. Therefore, the respondent is not in a position to provide any work to the petitioner throughout the year. It is alleged that the petitioner is in the habit of reporting for the duty at her sweet will, as per annexure R-1 mandays chart, whereby she could not complete 160 days. It is denied that the fictional breaks have been given to the petitioner or that her juniors have been regularized. The respondent has denied the case of the petitioner and prayed for rejecting the claim of the petitioner.

4. No rejoinder has been filed by the petitioner.

5. On 06.03.2014, following issues were framed:

1. Whether time to time termination of the services of the petitioner/giving breaks in service to the petitioner by the respondent during the year 2002 to 2010 is/was illegal and unjustified as alleged? ..OPP.
2. Whether the final termination of services of the petitioner by the respondent in the year 2011 is/was illegal and unjustified as alleged? ..OPP.
3. Whether the petitioner has a cause of action? ..OPR.
4. Whether the claim petition is not maintainable in the present form? ..OPR.
5. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
6. Whether the claim petition is premature and has become infructuous as alleged. If so, its effect? ..OPR.
7. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..OPR.
8. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Issue No.7 : No

Relief. : Reference answered accordingly.

Reasons For Findings

Issue No. 1

8. To prove the respective cases, the petitioner has herself appeared as PW1 and filed her affidavit of examination-in-chief Ex. PW1/A, in which she has pleaded the facts as averred in the statement of claim, by asserting her case. She has also filed letter Ex. PW1/B, whereby the government has decided that the daily wagers should be given work for full month as their fictional breaks are not considered by the Courts and they are deemed in continuous employment on daily wage basis. In her cross-examination she has denied that she used to remain absent occasionally, therefore, she could not complete 160 days in a year. She has denied that her attendance has been correctly marked in the muster roll. But, volunteered that at the spot, attendance is not recorded. She had admitted that she had also worked with the department in the year 2013. She has admitted that the Spiti Sub Division remains snow bound for more than six months, from April to November. She has denied that no fictional breaks were given to her. She had also filed the claim earlier, but later on withdrawn the same.

9. In rebuttal, the respondent had examined Sh Sanjeev Kumar Sharma, Executive Engineer I&PH Division, Kaza, who has filed his affidavit of examination-in-chief Ex. RW1/A, in which he has also pleaded the facts as asserted in the reply. He has also filed the record i.e. the mandays chart of the petitioner Ex. RW1/B, another mandays chart relating to the petitioner Ex. RW1/C, mandays chart of Tashi Tandup Ex. RW1/D, Mandays chart of Thuktan Zango Ex. RW1/E and mandays chart of Dorje Zango Ex. RW1/F. This witness in cross-examination has admitted that no appointment letter was issued to the petitioner though volunteered that the daily wagers are not issued any such letters as per the practice in the department, though, there is no such instruction in this regard. He has admitted that the petitioner had not been given work from November to May. He has admitted that in the letter Ex. PW1/B, relied on by the petitioner, the daily wagers have to be engaged for full month. He has however admitted that the mandays chart Ex. PX was issued by his department regarding daily wage workers, who have been provided the work of more than 300 days. He has admitted that there is no separate notification regarding Kaza that the work will not be provided from November to May. He has also admitted the letter Ex. PY, whereby the casual register and casual card have to be maintained regarding daily wagers. He has filed the seniority list of work charge Class IV beldars Ex. RW1/G. He has admitted that the work charge employees at serial No.57 to 60 were employed after the year 1998 and they had been made regular. He has stated that they have not issued any notice to the petitioner whenever she did not turn up for work. This is what, the parties have led in evidence.

10. I have heard the Id. Advocate/AR for the petitioner and Id. Dy. D.A. for the respondent.

11. It is the admitted case of the parties that the petitioner was a daily wager. It is claimed by the respondent that since Spiti Sub Division is snow bound for six months, therefore, work is not provided after November till April. However, no such Govt. order has been produced to show that the daily wagers cannot be kept after November till April. Further, the respondent could not clarify the position with regard to the mandays chart Ex. PX, whereby some other daily wage workers, in which the work even to the extent of 366 days was provided to the daily wagers. The three daily wagers shown in Ex. PX have been provided the work for more than 300 days in some years and they have been regularized. If the daily wage workers could not be provided the work after November till April of the year, then the department had to explain as to under what circumstances, certain daily wage workers shown in Ex. PX, were provided the work for 365 and 366 days. This is a case of sheer discrimination, whereby one set of workmen have been provided the work throughout the year and some workmen had not been provided even 160 days of work in 12 calendar months. Because, in the tribal area, for counting the continuous service, the workman has to work for 160 days in 12 calendar months. Similarly, the mandays chart of the work charge labour Ex. RW1/G shows that they have been employed after the petitioner was engaged by the respondent.

12. The Id. Dy. D.A. for the respondent has argued that the petitioner did not turn up for work so she could not complete 160 days in a 12 calendar months. However, the respondent in his evidence has admitted that no notice was given to the petitioner in case she did not turn up for work. It also appears to this Court that in case the employee is absent from duty, then the employer has to issue notice and disciplinary proceedings can be initiated for the absence. In case of the daily wage workers, the employer can issue notice asking them to join the duty, or else they can employ another daily wagers in his place. But, it has not been done in this case. Therefore, it cannot be said that the petitioner herself remained absent from duty, so that she could not complete 160 days of continuous service as per provisions of Section 25-B of the Act.

13. In view of the above discussions, there has been discrimination amongst the workers meted out of the respondent, whereas certain workmen have been engaged for whole of the year, without explaining why they were employed throughout the year and why the petitioner and similarly situated workmen were not provided the work throughout the year or at least for 160 days. Such a unfair labour practice cannot be approved of by the courts. Therefore, the fictional breaks given to the petitioner, as shown in the mandays chart, appears to illegal and the petitioner shall be deemed to be in continuous service as daily wage worker of the respondent. Since, certain junior workmen had been made regular, therefore, the petitioner is also entitled for regularization as per the government policy applicable to the daily wage workmen by the department. However, as the workman is still working with the department, there is no question of payment of back wages etc. Hence, the issue No.1 is decided in favour of the petitioner and against the respondent.

Issue No. 2

14. It appears that the respondent had been giving fictional breaks to the petitioner therefore, it does not amount to final termination of the services of the petitioner, as the petitioner is still said to be working with the respondent. Therefore, this issue becomes infructuous. Therefore, this issue is decided accordingly.

Issue No. 3

15. In view of the findings on the above issue No.1, it appears that the petitioner has a cause of action. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4

16. It is not shown by the respondent as to why the petition is not maintainable in this form. No infirmity in the form of the petition has been pointed out. In fact, the reference has been received from the appropriate Govt. and the petitioner has only to file the statement of claim under the Act. This Court does not find any infirmity in the form of the claim. Therefore, this issue is decided against the respondent and in favour of the petitioner.

Issue No. 5

17. There is no delay in filing the claim, though, only suggestion was given to the petitioner that she had filed the claim late, but no evidence has been led by the respondent in this regard. The petitioner has been still serving the respondent. In fact she was given less than 160 days of work in 12 calendar months, but similarly situated workmen had been shown to be regularized. Since, the petitioner is still working with the respondent, the question of delay becomes academic only, having no effect on the merits of the case. Hence, my finding on the above issue is in the negative, against the respondent and in favour of the petitioner.

Issue No. 6.

18. It is not shown by the respondent as to how the petition is premature. Because, the fictional breaks have admittedly been given to the petitioner. In view of the findings on issue No.1, it is to be held that the petition is not premature. Therefore, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 7

19. It is not shown as to how the petitioner has not come to the Court with clean hands. No evidence has been led on this issue. Therefore, this issue is decided accordingly.

Relief :

20. In view of the above discussion, it has to be held that the fictional breaks given to the petitioner did not seem to be justified. Therefore, the claim is allowed and reference answered accordingly in favour of the petitioner. The petitioner shall be deemed to be in the continuous service of the respondent with all consequential benefits, except back wages. She shall be considered for regularization by the respondent, at the time when her juniors are said to be regularized, as per the policy governing the daily wages, as framed by the State Government and operative from time to time. In the peculiar facts of the case, the parties shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of September, 2014.

(J.K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
Camp at Kaza.

**IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P. CAMP AT
KAZA, LAHAUL & SPITI.**

Ref No. : 131/2013

Date of Institution : 29.8.2013

Date of Decision : 22.09.2014

Smt. Chhering Butith, w/o Shri Chhering Chhutup, r/o Village & Post Office Hikkam,
District Lahaul & Spiti, H.P. ..Petitioner.

Versus

The Executive Engineer, I&PH Division Kaza, District Lahaul Spiti, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Chhering Butith, w/o Shri Chhering Chhutup, r/o Village & Post Office Hikkam, District Lahaul & Spiti, H.P. during 1999 to 2010 and finally during October, 2011 by the Executive Engineer, IPH Division Kaza, District Lahaul & Spiti, H.P., without complying with the provision of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After notice, the parties appeared. The petitioner has filed the statement of claim by alleging that she has been engaged on muster roll as daily wages, without issuing any appointment letter in the month of June, 1996. She worked under the Assistant Engineer, I&PH, Sub Division Kaza upto 31.10.2009, who gave her fictional breaks so that she may not complete 160 days in a calendar year. Thereafter, her services were terminated on 01.11.2009 by verbal orders of the respondent. It is alleged that the demand notice was raised before the Labour Officer, Recong Peo, which could not be reconciled. Thereafter, the matter was sent to the appropriate Govt., which made the reference and the same was sent to this Court. But, since the dispute was not properly referred by the Govt., the said reference was withdrawn. The petitioner thereafter, again raised fresh demand notice and the present reference was accordingly made. It is alleged that the respondent had terminated her services again in 2010, whereas she was given fictional breaks and was not allowed to complete 160 days in a calendar year and violated the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). But the department/respondent had not followed the principle of ‘last come first go’ inasmuch as the juniors of the petitioner namely Tashi Tandup, Thuktan Zangpo and Dorje Zangpo were retained continuously without any breaks in violation of Sections 25-G and 25-H of the Act. It is alleged that now the respondent has disengaged her service from 1.11.2013 on account of fictional breaks.

It is alleged that the petitioner had worked continuously since June, 1996 and has completed 10 years in the year 2005. Therefore, following the Mool Raj Upadhaya's case, the petitioner has to be regularized as work charge beldar from 1.1.2006 when her juniors were regularized. It is alleged that the breaks given to the petitioner by the respondent amounts unfair labour practice under Section 2(ra) of the Act. Hence, the petitioner has prayed for setting aside the illegal breaks given to her and allowing her all consequential service benefits, as allowed to her juniors.

3. The respondent has also filed the reply wherein it has taken preliminary objections regarding delay and cause of action. It is alleged that the petitioner is still in service and her services have not been disengaged. On merits, it is admitted that the petitioner was engaged in June, 1996 on daily wage basis. It is also alleged that the petitioner has been engaged in tribal area of Spiti Sub Division which remained snow bound for six months and the working season is from April to November, during which period the work is provided to the daily wagers. Therefore, the respondent is not in a position to provide any work to the petitioner throughout the year. It is alleged that the petitioner is in the habit of reporting for the duty at her sweet will, as per annexure R-1 mandays chart, whereby she could not complete 160 days. It is denied that the fictional breaks have been given to the petitioner or that her juniors have been regularized. The respondent has denied the case of the petitioner and prayed for rejecting the claim of the petitioner.

4. No rejoinder has been filed by the petitioner.

5. On 06.03.2014, following issues were framed:

1. Whether time to time termination of the services of the petitioner/giving breaks in service to the petitioner by the respondent during the year 1999 to 2010 is/was illegal and unjustified as alleged? ..OPP.
 2. Whether the final termination of services of the petitioner by the respondent in the year 2011 is/was illegal and unjustified as alleged? ..OPP.
 3. Whether the petitioner has a cause of action? ..OPR.
 4. Whether the claim petition is not maintainable in the present form? ..OPR.
 5. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
 6. Whether the claim petition is premature and has become infructuous as alleged. If so, its effect? ..OPR.
 7. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..OPR.
 8. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : No
 Issue No.3 : Yes
 Issue No.4 : No
 Issue No.5 : No

Issue No.6 : No
Issue No.7 : No
Relief. : Reference answered accordingly.

Reasons for findings

Issue No. 1

8. To prove the respective cases, the petitioner has herself appeared as PW1 and filed her affidavit of examination-in-chief Ex. PW1/A, in which she has pleaded the facts as averred in the statement of claim, by asserting her case. She has also filed letter Ex. PW1/B, whereby the government has decided that the daily wagers should be given work for full month as their fictional breaks are not considered by the Courts and they are deemed in continuous employment on daily wage basis. In her cross-examination she has denied that she used to remain absent occasionally, therefore, she could not complete 160 days in a year. She has denied that her attendance has been correctly marked in the muster roll. But, volunteered that at the spot, attendance is not recorded. She had admitted that she had also worked with the department in the year 2013. She has admitted that the Spiti Sub Division remains snow bound for more than six months, from April to November. She has denied that no fictional breaks were given to her. She had also filed the claim earlier, but later on withdrawn the same.

9. In rebuttal, the respondent had examined Sh Sanjeev Kumar Sharma, Executive Engineer I&PH Division, Kaza, who has filed his affidavit of examination-in-chief Ex. RW1/A, in which he has also pleaded the facts as asserted in the reply. He has also filed the record i.e. the mandays chart of the petitioner Ex. RW1/B, another mandays chart relating to the petitioner Ex. RW1/C, mandays chart of Tashi Tandup Ex. RW1/D, Mandays chart of Thuktan Zango Ex. RW1/E and mandays chart of Dorje Zango Ex. RW1/F. This witness in cross-examination has admitted that no appointment letter was issued to the petitioner though volunteered that the daily wagers are not issued any such letters as per the practice in the department, though, there is no such instruction in this regard. He has admitted that the petitioner had not been given work from November to May. He has admitted that in the letter Ex. PW1/B, relied on by the petitioner, the daily wagers have to be engaged for full month. He has however admitted that the mandays chart Ex. PX was issued by his department regarding daily wage workers, who have been provided the work of more than 300 days. He has admitted that there is no separate notification regarding Kaza that the work will not be provided from November to May. He has also admitted the letter Ex. PY, whereby the casual register and casual card have to be maintained regarding daily wagers. He has filed the seniority list of work charge Class IV beldars Ex. RW1/G. He has admitted that the work charge employees at serial No.38 to 60 were employed after the year 1998 and they had been made regular. He has stated that they have not issued any notice to the petitioner whenever she did not turn up for work. This is what, the parties have led in evidence.

10. I have heard the Id. Advocate/AR for the petitioner and Id. Dy. D.A. for the respondent.

11. It is the admitted case of the parties that the petitioner was a daily wager. It is claimed by the respondent that since Spiti Sub Division is snow bound for six months, therefore, work is not provided after November till April. However, no such Govt. order has been produced to show that the daily wagers cannot be kept after November till April. Further, the respondent could not clarify the position with regard to the mandays chart Ex. PX, whereby some other daily wage workers, in which the work even to the extent of 366 days was provided to the daily wagers. The three daily wagers shown in Ex. PX have been provided the work for more than 300 days in some years and they have been regularized. If the daily wage workers could not be provided the work after

November till April of the year, then the department had to explain as to under what circumstances, certain daily wage workers shown in Ex. PX, were provided the work for 365 and 366 days. This is a case of sheer discrimination, whereby one set of workmen have been provided the work throughout the year and some workmen had not been provided even 160 days of work in 12 calendar months. Because, in the tribal area, for counting the continuous service, the workman has to work for 160 days in 12 calendar months. Similarly, the mandays chart of the work charge labour Ex. RW1/G shows that they have been employed after the petitioner was engaged by the respondent.

12. The Id. Dy. D.A. for the respondent has argued that the petitioner did not turn up for work so she could not complete 160 days in a 12 calendar months. However, the respondent in his evidence has admitted that no notice was given to the petitioner in case she did not turn up for work. It also appears to this Court that in case the employee is absent from duty, then the employer has to issue notice and disciplinary proceedings can be initiated for the absence. In case of the daily wage workers, the employer can issue notice asking them to join the duty, or else they can employ another daily wagers in his place. But, it has not been done in this case. Therefore, it cannot be said that the petitioner herself remained absent from duty, so that she could not complete 160 days of continuous service as per provisions of Section 25-B of the Act.

13. In view of the above discussions, there has been discrimination amongst the workers meted out of the respondent, whereas certain workmen have been engaged for whole of the year, without explaining why they were employed throughout the year and why the petitioner and similarly situated workmen were not provided the work throughout the year or at least for 160 days. Such a unfair labour practice cannot be approved of by the courts. Therefore, the fictional breaks given to the petitioner, as shown in the mandays chart, appears to illegal and the petitioner shall be deemed to be in continuous service as daily wage worker of the respondent. Since, certain junior workmen had been made regular, therefore, the petitioner is also entitled for regularization as per the government policy applicable to the daily wage workmen by the department. However, as the workman is still working with the department, there is no question of payment of back wages etc. Hence, the issue No.1 is decided in favour of the petitioner and against the respondent.

Issue No. 2

14. It appears that the respondent had been giving fictional breaks to the petitioner therefore, it does not amount to final termination of the services of the petitioner, as the petitioner is still said to be working with the respondent. Therefore, this issue becomes infructuous. Therefore, this issue is decided accordingly.

Issue No. 3

15. In view of the findings on the above issue No.1, it appears that the petitioner has a cause of action. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4

16. It is not shown by the respondent as to why the petition is not maintainable in this form. No infirmity in the form of the petition has been pointed out. In fact, the reference has been received from the appropriate Govt. and the petitioner has only to file the statement of claim under the Act. This Court does not find any infirmity in the form of the claim. Therefore, this issue is decided against the respondent and in favour of the petitioner.

Issue No. 5

17. There is no delay in filing the claim, though, only suggestion was given to the petitioner that she had filed the claim late, but no evidence has been led by the respondent in this regard. The petitioner has been still serving the respondent. In fact she was given less than 160 days of work in 12 calendar months, but similarly situated workmen had been shown to be regularized. Since, the petitioner is still working with the respondent, the question of delay becomes academic only, having no effect on the merits of the case. Hence, my finding on the above issue is in the negative, against the respondent and in favour of the petitioner.

Issue No. 6

18. It is not shown by the respondent as to how the petition is premature. Because, the fictional breaks have admittedly been given to the petitioner. In view of the findings on issue No.1, it is to be held that the petition is not premature. Therefore, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 7

19. It is not shown as to how the petitioner has not come to the Court with clean hands. No evidence has been led on this issue. Therefore, this issue is decided accordingly.

Relief:

20. In view of the above discussion, it has to be held that the fictional breaks given to the petitioner did not seem to be justified. Therefore, the claim is allowed and reference answered accordingly in favour of the petitioner. The petitioner shall be deemed to be in the continuous service of the respondent with all consequential benefits, except back wages. She shall be considered for regularization by the respondent, at the time when her juniors are said to be regularized, as per the policy governing the daily wages, as framed by the State Government and operative from time to time. In the peculiar facts of the case, the parties shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of September, 2014.

(J.K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
Camp at Kaza.

**IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM- INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA,
H.P. CAMP AT KAZA, LAHAUL & SPITI.**

Ref No. : 132/2013

Date of Institution : 29.8.2013

Date of Decision : 22.09.2014

Smt. Chhering Dolma w/o Late Shri Sonam Tashi, r/o Village and P.O. Kaza, District Lahaul & Spiti, H.P. ..Petitioner.

Versus

The Executive Engineer, I&PH Division Kaza, Tehsil Kaza, District Lahaul Spiti, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Chhering Dolma, W/O Late Shri Sonam Tashi, R/O Village and .P.O. Kaza, District Lahaul Spiti, H.P. during 1997 to 2010 and finally during 2011 by the Executive Engineer, I&PH Division Kaza, District Lahaul & Spiti, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After notice, the parties appeared. The petitioner has filed the statement of claim by alleging that she has been engaged on muster roll as daily wages, without issuing any appointment letter in the month of May, 1996. She worked under the Assistant Engineer, I&PH, Sub Division Kaza upto 31.10.2009, who gave her fictional breaks so that she may not complete 160 days in a calendar year. Thereafter, her services were terminated on 01.11.2009 by verbal orders of the respondent. It is alleged that the demand notice was raised before the Labour Officer, Recong Peo, which could not be reconciled. Thereafter, the matter was sent to the appropriate Govt., which made the reference and the same was sent to this Court. But, since the dispute was not properly referred by the Govt. , the said reference was withdrawn. The petitioner thereafter, again raised fresh demand notice and the present reference was accordingly made. It is alleged that the respondent had terminated her services again in 2010, whereas she was given fictional breaks and was not allowed to complete 160 days in a calendar year and violated the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). But the department/respondent had not followed the principle of ‘last come first go’ inasmuch as the juniors of the petitioner namely Tashi Tandup, Thuktan Zangpo and Dorje Zangpo were retained continuously without any breaks in violation of Sections 25-G and 25-H of the Act. It is alleged that now the respondent has disengaged her service from 1.11.2013 on account of fictional breaks. It is alleged that the petitioner had worked continuously since May, 1996 and has completed 10 years in the year 2005. Therefore, following the Mool Raj Upadhaya’s case, the petitioner has to be regularized as work charge beldar from 1.1.2006 when her juniors were regularized. It is alleged that the breaks given to the petitioner by the respondent amounts unfair labour practice under Section 2(ra) of the Act. Hence, the petitioner has prayed for setting aside the illegal breaks given to her and allowing her all consequential service benefits, as allowed to her juniors.

3. The respondent has also filed the reply wherein it has taken preliminary objections regarding delay and cause of action. It is alleged that the petitioner is still in service and her

services have not been disengaged. On merits, it is admitted that the petitioner was engaged in May, 1996 on daily wage basis. It is also alleged that the petitioner has been engaged in tribal area of Spiti Sub Division which remained snow bound for six months and the working season is from April to November, during which period the work is provided to the daily wagers. Therefore, the respondent is not in a position to provide any work to the petitioner throughout the year. It is alleged that the petitioner is in the habit of reporting for the duty at her sweet will, as per annexure R-1 mandays chart, whereby she could not complete 160 days. It is denied that the fictional breaks have been given to the petitioner or that her juniors have been regularized. The respondent has denied the case of the petitioner and prayed for rejecting the claim of the petitioner.

4. No rejoinder has been filed by the petitioner.
5. On 06.03.2014, following issues were framed:
 1. Whether time to time termination of the services of the petitioner/giving breaks in service to the petitioner by the respondent during the year 1997 to 2010 is/was illegal and unjustified as alleged? ..OPP.
 2. Whether the final termination of services of the petitioner by the respondent in the year 2011 is/was illegal and unjustified as alleged? ..OPP.
 3. Whether the petitioner has a cause of action? ..OPR.
 4. Whether the claim petition is not maintainable in the present form? ..OPR.
 5. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
 6. Whether the claim petition is premature and has become infructuous as alleged. If so, its effect? ..OPR.
 7. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..OPR..
 8. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : No
 Issue No.3 : Yes
 Issue No.4 : No
 Issue No.5 : No
 Issue No.6 : No
 Issue No.7 : No
 Relief. : Reference answered accordingly.

Reasons for findings

Issue No. 1

8. To prove the respective cases, the petitioner has herself appeared as PW1 and filed her affidavit of examination-in-chief Ex. PW1/A, in which she has pleaded the facts as averred in the statement of claim, by asserting her case. She has also filed letter Ex. PW1/B, whereby

the government has decided that the daily wagers should be given work for full month as their fictional breaks are not considered by the Courts and they are deemed in continuous employment on daily wage basis. In her cross examination she has denied that she used to remain absent occasionally, therefore, she could not complete 160 days in a year. She has denied that her attendance has been correctly marked in the muster roll. But, volunteered that at the spot, attendance is not recorded. She had admitted that she had also worked with the department in the year 2013. She has admitted that the Spiti Sub Division remains snow bound for more than six months, from April to November. She has denied that no fictional breaks were given to her. She had also filed the claim earlier, but later on withdrawn the same.

9. In rebuttal, the respondent had examined Sh Sanjeev Kumar Sharma, Executive Engineer I&PH Division, Kaza, who has filed his affidavit of examination-in-chief Ex. RW1/A, in which he has also pleaded the facts as asserted in the reply. He has also filed the record i.e. the mandays chart of the petitioner Ex. RW1/B, another mandays chart relating to the petitioner Ex. RW1/C, mandays chart of Tashi Tandup Ex. RW1/D, Mandays chart of Thuktan Zango Ex. RW1/E and mandays chart of Dorje Zango Ex. RW1/F. This witness in cross-examination has admitted that no appointment letter was issued to the petitioner though volunteered that the daily wagers are not issued any such letters as per the practice in the department, though, there is no such instruction in this regard. He has admitted that the petitioner had not been given work from November to May. He has admitted that in the letter Ex. PW1/B, relied on by the petitioner, the daily wagers have to be engaged for full month. He has however admitted that the mandays chart Ex. PX was issued by his department regarding daily wage workers, who have been provided the work of more than 300 days. He has admitted that there is no separate notification regarding Kaza that the work will not be provided from November to May. He has also admitted the letter Ex. PY, whereby the casual register and casual card have to be maintained regarding daily wagers. He has filed the seniority list of work charge Class IV beldars Ex. RW1/G. He has admitted that the work charge employees at serial No.38 to 60 were employed after the year 1998 and they had been made regular. He has stated that they have not issued any notice to the petitioner whenever she did not turn up for work. This is what, the parties have led in evidence.

10. I have heard the Id. Advocate/AR for the petitioner and Id. Dy. D.A. for the respondent.

11. It is the admitted case of the parties that the petitioner was a daily wager. It is claimed by the respondent that since Spiti Sub Division is snow bound for six months, therefore, work is not provided after November till April. However, no such Govt. order has been produced to show that the daily wagers cannot be kept after November till April. Further, the respondent could not clarify the position with regard to the mandays chart Ex. PX, whereby some other daily wage workers, in which the work even to the extent of 366 days was provided to the daily wagers. The three daily wagers shown in Ex. PX have been provided the work for more than 300 days in some years and they have been regularized. If the daily wage workers could not be provided the work after November till April of the year, then the department had to explain as to under what circumstances, certain daily wage workers shown in Ex. PX, were provided the work for 365 and 366 days. This is a case of sheer discrimination, whereby one set of workmen have been provided the work throughout the year and some workmen had not been provided even 160 days of work in 12 calendar months. Because, in the tribal area, for counting the continuous service, the workman has to work for 160 days in 12 calendar months. Similarly, the mandays chart of the work charge labour Ex. RW1/G shows that they have been employed after the petitioner was engaged by the respondent.

12. The Id. Dy. D.A. for the respondent has argued that the petitioner did not turn up for work so she could not complete 160 days in a 12 calendar months. However, the respondent in his

evidence has admitted that no notice was given to the petitioner in case she did not turn up for work. It also appears to this Court that in case the employee is absent from duty, then the employer has to issue notice and disciplinary proceedings can be initiated for the absence. In case of the daily wage workers, the employer can issue notice asking them to join the duty, or else they can employ another daily wagers in his place. But, it has not been done in this case. Therefore, it cannot be said that the petitioner herself remained absent from duty, so that she could not complete 160 days of continuous service as per provisions of Section 25-B of the Act.

13. In view of the above discussions, there has been discrimination amongst the workers meted out of the respondent, whereas certain workmen have been engaged for whole of the year, without explaining why they were employed throughout the year and why the petitioner and similarly situated workmen were not provided the work throughout the year or at least for 160 days. Such a unfair labour practice cannot be approved of by the courts. Therefore, the fictional breaks given to the petitioner, as shown in the mandays chart, appears to illegal and the petitioner shall be deemed to be in continuous service as daily wage worker of the respondent. Since, certain junior workmen had been made regular, therefore, the petitioner is also entitled for regularization as per the government policy applicable to the daily wage workmen by the department. However, as the workman is still working with the department, there is no question of payment of back wages etc. Hence, the issue No.1 is decided in favour of the petitioner and against the respondent.

Issue No. 2

14. It appears that the respondent had been giving fictional breaks to the petitioner therefore, it does not amount to final termination of the services of the petitioner, as the petitioner is still said to be working with the respondent. Therefore, this issue becomes infructuous. Therefore, this issue is decided accordingly.

Issue No. 3

15. In view of the findings on the above issue No.1, it appears that the petitioner has a cause of action. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4

16. It is not shown by the respondent as to why the petition is not maintainable in this form. No infirmity in the form of the petition has been pointed out. In fact, the reference has been received from the appropriate Govt. and the petitioner has only to file the statement of claim under the Act. This Court does not find any infirmity in the form of the claim. Therefore, this issue is decided against the respondent and in favour of the petitioner.

Issue No. 5

17. There is no delay in filing the claim, though, only suggestion was given to the petitioner that she had filed the claim late, but no evidence has been led by the respondent in this regard. The petitioner has been still serving the respondent. In fact she was given less than 160 days of work in 12 calendar months, but similarly situated workmen had been shown to be regularized. Since, the petitioner is still working with the respondent, the question of delay becomes academic only, having no effect on the merits of the case. Hence, my finding on the above issue is in the negative, against the respondent and in favour of the petitioner.

Issue No. 6

18. It is not shown by the respondent as to how the petition is premature. Because, the fictional breaks have admittedly been given to the petitioner. In view of the findings on issue No.1, it is to be held that the petition is not premature. Therefore, this issue is decided in favour of the petitioner and against the respondent.

19. It is not shown as to how the petitioner has not come to the Court with clean hands. No evidence has been led on this issue. Therefore, this issue is decided accordingly.

Relief :

20. In view of the above discussion, it has to be held that the fictional breaks given to the petitioner did not seem to be justified. Therefore, the claim is allowed and reference answered accordingly in favour of the petitioner. The petitioner shall be deemed to be in the continuous service of the respondent with all consequential benefits, except back wages. She shall be considered for regularization by the respondent, at the time when her juniors are said to be regularized, as per the policy governing the daily wagers, as framed by the State Government and operative from time to time. In the peculiar facts of the case, the parties shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of September, 2014.

(J.K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
Camp at Kaza.

समक्ष सहायक समाहर्ता प्रथम श्रेणी, तहसील बन्जार, जिला कुल्लू (हि0 प्र0)

विषय.—दरखास्त मखफूद—उल—खबरी जेर धारा 5, नियम 20, निस्वत लापता होने यज्ञ चन्द पुत्र श्री तुले राम, गांव पलिचा, फाटी सराज, कोठी फतेहपुर, तहसील बन्जार।

उपरोक्त विषय में श्री बीर सिंह पुत्र तुले राम, गांव पलिचा, फाटी सराज, कोठी फतेहपुर, तहसील बन्जार, जिला कुल्लू ने एक प्रार्थना—पत्र इस कार्यालय में प्रस्तुत किया है कि उसका छोटा भाई श्री यज्ञ चन्द पुत्र श्री तुले राम, निवासी गांव पलिचा, फाटी सराज, कोठी फतेहपुर, तहसील बन्जार, जिला कुल्लू (हि0 प्र0) पिछले अरसा करीब 12 वर्षों से लापता है। श्री यज्ञ चन्द अविवाहित बिला औलाद है। अतः वाहिद उत्तराधिकारी भी है। लापता यज्ञ चन्द का ताहाल कोई भी पता नहीं लग रहा है। अतः इस इश्तहार द्वारा उक्त लापता व्यक्ति व सर्वसाधारण को/जनता को सूचित किया जाता है कि यदि उपरोक्त यज्ञ चन्द का इंतकाल वरासत बहक प्रार्थी दर्ज करने बारे अगर किसी को उजर या एतराज हो तो दिनांक 20—11—2014 को ब मकाम पटवार वृत्त सराज में असागतन या वकालतन पेश होकर अपना उजर/एतराज पेश कर सकते हैं अन्यथा इन्तकाल नियमानुसार बहक उपरोक्त वारसान के नाम तस्दीक कर दिया जाएगा।

आज दिनांक 20—10—2014 को मेरे हस्ताक्षर व मोहर सहित जारी हुआ।
मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता प्रथम श्रेणी,
बन्जार, जिला कुल्लू (हि0 प्र0)।

**In the Court of Shri Gian Sagar Negi, Sub-Divisional Magistrate, Shimla (R)
District Shimla (H. P.)**

Shri Shiv Ram s/o Shri Madho Ram, r/o Village Choba, P.O. Dhoop Kiara, Tehsil Jaisinghpur, District Kangra (H. P.).

Versus

General public

.. Respondent.

Whereas Shri Shiv Ram s/o Shri Madho Ram, r/o Village Choba, P.O. Dhoop Kiara, Tehsil Jaisinghpur, District Kangra (H. P.) has filed an application alongwith affidavit in the court of undersigned under section 13 (3) of the Birth & Death Registration Act, 1969 to enter the date of death of his son-in-law, named Late Shri Balbir Kumar s/o Shri Rirku Ram, r/o Village and P.O. Dhoop Kiara, Tehsil Jaisinghpur, District Kangra (H. P.) in the record of Birth and Death in the Office of Sub-Registrar, MC Shimla, as per recommendation from CMO Shimla vide No. HFW-SML-B&D/ST/12/2509, dated 27-10-2014.

Sl. No.	Name of the family member	Relation	Date of Death
1.	Late Shri Balbir Kumar	s/o Shri Rirku Ram	26-4-2014

Hence, this proclamation is issued to the general public if they have any objection/claim regarding entry of the date of death of above in the record of MC Shimla, may file their claim/objections on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued today 30-10-2014 under my signature and seal of the court.

Seal.

GIAN SAGAR NEGI,
Sub-Divisional Magistrate,
Shimla (R), District Shimla (H.P.).

नाम परिवर्तन

मैं, सुनिता देवी पत्नी गुरदयाल, गांव मानन्द, तहसील सुन्नी (शिमला) सूचित करती हूं कि मैं अपना नाम सुनिता से बदलकर शान्ता देवी रख रही हूं। नोट करें।

शान्ता देवी,
पत्नी श्री गुरदयाल,
निवासी गांव मानन्द, तहसील सुन्नी, जिला शिमला (हि0 प्र0)।

PUBLIC NOTICE

I, Sushil Kumar Sharma, r/o Village Mankot, P.O. Jaunta, Tehsil Nurpur, District Kangra, H.P. do hereby solemnly affirm that the name of my son was wrongly appeared in 10th Examination CBSE Board certificate 2014 as Vaibhav. Whereas in the Panchayat record it is Vaibhav Sharma. For relevant correction in the 10th Certificate the name may be written as Vaibhav Sharma.

SUSHIL KUMAR SHARMA,
r/o Village Mankot, P.O. Jaunta,
Tehsil Nurpur, District Kangra (H.P.).

Change of Name

I, Dharmveer s/o Shri Balbir Chand, r/o 13/5 AG Colony Merlyn Park Area, Shimla (H.P.) have changed my name Dharmveer to Dharmveer Shergill.

DHARMVEER,
s/o Shri Balbir Chand,
r/o 13/5 AG Colony, Merlyn Park Area,
Shimla (H. P.).